SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 355.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, PETITIONER,

vs.

JOHN E. SULLIVAN.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

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1 C. P. No. 2, December Term, 1919, No. 6179.

Docket entries.

JOHN E. SULLIVAN

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Certiorari to workmen's compensation board exit.
Feb. 14, 1920, exceptions on appeal and affdt. filed.
Feb. 26, 1920, record returned, opened, and filed.
Apl. 26, 1920, petition for leave to substitute corrected notice of appeal filed.
Eo die, petition allowed.
May 12, 1920, appeal dismissed and award confirmed on the opinion of Mackey, chairman of workmen's compensation board.
June 4, 1920, certiorari from Superior Court of Oct. T., 1920. No. 186, &c., brought into office.
June 5, 1920, appeal bond filed.
Eo die, opinion filed.
F. F. Kane & H. J. Gibbons.
Certified from the record this 7th day of June, A. D. 1920.
[SEAL.]

R. M. SNYDER,
Pro prothy.

2 IN THE MATTER OF JOHN E. SULLIVAN,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Bureau of Workmen's Compensation. Claim petition # 7627.
Issue certiorari to the workmen's compensation board in the above case.

FRANCIS FISHER KANE,
H. J. GIBBONS,
By A. J. GOLDIN,
Attorneys for Emergency Fleet Corp.

(Endorsement:) C. P. No. 2, Dec., 1919. John E. Sullivan vs. U. S. Shipping Board Emergency Fleet Corp. 6179. Præcipe. Filed Feb. 14, 1920. (Mark.) pro prothy. Francis Fisher Kane, H. J. Gibbons, P. O. Building, Phila., Pa.

3 IN THE COURT OF COMMON PLEAS, NO. —, FOR THE COUNTY OF PHILADELPHIA.

December Term, 1918. No. —.

Bureau of Workmen's Compensation.

Claim petition No. 7627.

IN THE MATTER OF JOHN E. SULLIVAN

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, By ROBERT LYONS HAGUE, DIRECTOR OF DIVISION OF CONSTRUCTION OF REPAIRS, APPELLANT.

United States Shipping Board Emergency Fleet Corporation appeals from the decision of the workmen's compensation board made on February 5th, 1920, on the claim above mentioned.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Robert Lyons Hague, on oath says that he is the director of the Division of Construction and Repairs of the United States Shipping Board Emergency Fleet Corporation, and duly authorized in that capacity to execute documents of this nature, and that this appeal is not taken for the purpose of delay, but because the appellant believes that the United States Employees' Compensation Commission has exclusive jurisdiction, and that an injustice has been done to the interest of the United States of America by the decision appealed from.

(Signed) ROBERT LYONS HAGUE.

Sworn and subscribed before me this 13th day of February, 1920.
[SEAL.] ELEANOR L. JAQUETTE,
Notary Public.

Commission expires Feby. 21, 1923.

4 In the Court of Common Pleas, No. —, for the County of Philadelphia.

December Term, 1918. No. —.

Bureau of Workmen's Compensation.

Claim petition No. 7627.

IN THE MATTER OF JOHN E. SULLIVAN

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, BY ROBERT LYONS HAGUE, DIRECTOR OF DIVISION OF CONSTRUCTION OF REPAIRS, APPELLANT.

To the honorable judges of the said court:

United States Shipping Board Emergency Fleet Corporation, representing United States of America, excepts to the decision of the Workmen's Compensation Board of Pennsylvania on claim petition No. 7627, filed by John E. Sullivan for the following reasons:

1. Because the said John E. Sullivan is an employee of the United States of America.

2. That he received his compensation by payment directly from the Treasurer of the United States from appropriations under various urgent deficiency acts for the cost of building ships.

3. Because the United States Employees' Compensation Commission has exclusive jurisdiction in compensation cases of this sort.

4. Because the Workmen's Compensation Board of Pennsylvania erred in accepting jurisdiction in this matter, as its attention had been called to the fact that various United States District Courts as well as administrative bodies of the Federal and State Governments, including the Attorney General of the United States, the Comptroller of the Treasury, the United States Employees' Compensation Commission, the comptroller of the State of New York, the State board of taxation of New Jersey, the United States Commissioner of Internal Revenue, and other bodies and officials had decided that the United States Shipping Board Emergency Fleet Corporation is an arm of the United States Government, acting in a representative capacity, exercising powers delegated to it by the President of the United States, and expending only money appropriated to it by Congress of the United States.

5. Because the Workmen's Compensation Board of Pennsylvania erred in confirming the award of the referee on behalf of the said claimant.

(Signed) FRANCIS FISHER KANE,
United States Attorney.

(Signed) HENRY J. GIBBONS,
Assistant Counsel, United States Shipping Board Emergency Fleet Corporation.

5 (Endorsement:) C. P. 2 D 19. 6179. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corporation. Exceptions on appeal and affidavit. Filed Feb. 14, 1920 (Mark), Pro. Prothy. Francis Fisher Kane, Henry J. Gibbons, Postoffice Building, Phila., Pa.

6 *Docket entries.* A–1318

Proceedings under Claim Petition 37627.

JOHN E. SULLIVAN *vs.* U. S. SHIPPING BOARD Emergency Fleet Corp. } C. W. Bosler, referee, first compensation district.

Apr. 1, 1919. Claim petition filed.
Counsel for claimant, Samuel Scoville, jr., Phila.
Mar. 31, 1919. Notice to defendant of claim petition.
Mar. 31, 1919. Assignment of claim petition to referee.
Apl. 8, 1919. Defendant's answer to claim petition filed.
Counsel for defendant, Henry J. Gibbons, Esq., Phila.
Insurer of defendant; self insured.
Apl. 9, 1919. Notice of hearing with copy of answer served.
Apl. 17, 1919. Hearing before referee at Phila.; continued to May 27, 1919.
Sept. 5, 1919. Referee's award filed.
Sept. 19, 1919. Appeal by defendant from referee's conclusions of law filed.
Sept. 19, 1919. Notice of appeal mailed to defendant.
Oct. 25, 1919. Stenographic notes of testimony filed.
Nov. 11, 1919. Hearing before board on appeal at Phila.; oral argument and briefs submitted and referred to Chairman Mackey for opinion.
Dec. 15, 1919. Opinion by Chairman Mackey, Commissioners Houck & Jarrett concurring, ordering hearing de novo filed.
Dec. 15, 1919. Notice of decision of the board, with copies of same, mailed to appellant and appellee.
7 Jan. 9, 1920. Hearing de novo before the workmen's compensation board at Phila. Stenographic notes of testimony filed and referred to Chairman Mackey for opinion.
Feb. 5, 1920. Opinion by Chairman Mackey, Commissioners Houck and Jarrett concurring, affirming referee's finding of fact and conclusions of law and dismissing appeal filed.
Feb. 5, 1920. Notice of decision of the board, with copies of same, mailed to appellant and appellee.

Feb. 17, 1920. Appeal and exceptions by defendant from decision of the workmen's compensation board received by bureau.

Feb. 17, 1920. Certiorari to workmen's compensation board as of Dec. term, 1919, No. 6179, received. C. P. #2.

Feb. 25, 1920. Certified copy of transcript of the record, being proceedings under claim petition #7627, in the bureau of the workmen's compensation board of Pennsylvania, mailed to Proth'y, C. P. of Philadelphia County.

8 *Employe's claim petition for compensation for disability.*

Section 412.

Received Apr. 1, 1919.

Received Mar. 28, 1919.

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim petition No. 7627.

JOHN E. SULLIVAN, CLAIMANT,

vs.

U. S. SHIPPING BOARD EMERGENCY FLEET CORP., DEFENDANT.

To the workmen's compensation board of Pennsylvania:

The claimant respectfully alleges the following facts:

1. By whom were you employed at the time of the accident? U. S. Shipping Board Emergency Fleet Corp., 140 N. Broad St., Philadelphia.

2. Where did the accident happen? 12th & Columbia Ave., Phila.

3. When did the accident happen? Oct. 10th, 1918.

4. What kind of work were you doing at the time of the accident? Driving an auto truck.

5. What was the nature of the injury and how was it caused? Collision with another truck causing fracture and permanent stiffening of right hand and contusions and bruises of right hip.

6. Did you receive medical, surgical, or hospital services? Dr. Usilson at 198 Cumberland St., after at hospital at 19 & Jefferson.

7. Did you request the defendant to furnish these services? No. Were they furnished? No. If not, what sums did you spend for them? $18.00.

8. To what extent did your injury prevent you from working? Altogether. For how long? From Oct. 10, 1918, to Dec. 27, 1918.

Have you fully recovered? No. Have you partially recovered, and if so, to what extent? Yes, my hand is still stiff and I can not drive a car but can do other work. When did you resume work? Dec. 27, 1918. Where? Camden, N. J. For whom? Penna. R. R. Company. At what trade or occupation? Car tracer. At what wages? 32¢ per hr., averaging 5.

9. What were your weekly wages at time of accident? $25.00. What was the business of your employer? U. S. Shipping Board. What was your occupation? Chauffeur.

10. When did you serve notice of your injury upon your employer? No notice served, employer knew of accident immediately.

11. What other facts are there which you believe important?

12. State total amount of compensation claimed. $100.00.

Wherefore the claimant asks that your honorable board shall make an award that the defendant shall pay to him such compensation as may be due him under the above alleged facts.

JOHN E. SULLIVAN,
Claimant.

Penna. R. R. Co., Camden, N. J.

Subscribed and sworn to before me, this 13th day of Jan., 1919, at Philadelphia, Pa.

[SEAL.] JULIUS B. PRICE, Jr., *N. P.*

My commission expires on the 22nd day of Jan., 1921.

9 Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Notice to defendant of claim petition.

(Section 413.)

JOHN E. SULLIVAN, CLAIMANT,
vs.
U. S. SHIPPING BOARD EMERGENCY FLEET Corp., defendant. } Claim Petition No. 7627.

HARRISBURG, PA., *March 31st, 1919.*

To U. S. Shipping Board Emergency Fleet Corp., 140 N. Broad St., Philadelphia, Penna.

A claim petition, a copy of which is enclosed herewith, has been presented by John E. Sullivan against you to the workmen's compensation board, and has been assigned to C. W. Bosler, compensation referee of the 1st district for investigation and determination in accordance with the provisions of the workmen's compensation act of 1915.

We hereby notify you that unless an answer shall within seven days from the date of this notice be filed with the said referee at his

office, 1103 N. American Building, Philadelphia, Pa., the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the claimant to prove, nor heard in your behalf to deny, such facts.

WORKMEN'S COMPENSATION BUREAU,
LEE SOLOMON, *Secretary.*

gm. EMR

NOTE.—The defendant should file his answer in triplicate with the referee.

10 Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Assignment of claim petition to referee.

(Section 413.)

JOHN E. SULLIVAN, CLAIMANT, c/o PENNA. Railroad Company, Address, Camden, N. J.,

vs.

U. S. SHIPPING BOARD EMERGENCY FLEET Corp., defendant, Address, 140 N. Broad St., Phila., Pa.

Claim Petition No. 7627.

HARRISBURG, PA., *March 31st, 1919.*

To C. W. Bosler, referee, 1st district.

Enclosed find copy of above claim petition No. 7627 which is assigned to you for investigation and determination in accordance with the provisions of the workmen's compensation act of 1915.

WORKMEN'S COMPENSATION BUREAU,
LEE SOLOMON, *Secretary.*

(Filed thru Samuel Scoville, jr., 1307–08 Penna. Bldg., Philadelphia, Penna.)

gm/EMR.

Copy of claim petition served on defendant, forwarded this date.

11 *Defendant's answer to claim petition.*

(Section 414.)

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim petition No. 7627.

JOHN E. SULLIVAN, CLAIMANT,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, DEFENDANT.

APRIL 5TH, 1919.

In answer to the claim petition No. 7627.

1. The defendant denies the following facts alleged in the claim petition, That injury is of a permanent nature as alleged.

2. The defendant states the following additional facts not alleged in the claim petition:

3. The defendant denies that he is liable to pay compensation under the facts alleged in the claim petition, for the following reasons: That claimant was a direct employee of the United States Shipping Board Emergency Fleet Corp., and accordingly is a civil employee of the United States of America, and will be compensated for injury under the Federal workmen's compensation act, subject to sustaining proof of disability.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By G. J. BARRETT,
Manager Insurance Department,
140 North Broad St., Phila., Pa.

gm/EMR.

Subscribed and sworn to before me this 5th day of April, 1919.

[SEAL.] GIBSON DE FIGAMIERE.

My commission expires on the 24th day of February, 1923.

(This affidavit may be sworn to before a compensation referee or any other person authorized to administer an oath.)

12 Received Oct. 25, 1919. Workmen's compensation board
Referred to ———.

JOHN E. SULLIVAN

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Claim petition No. 7627.

Hearing held before Referee C. W. Bosler, first district, 1115 North American Building, Philadelphia, on Friday, July 11th, 1919, at 1 p. m.

Present: Samuel Scoville, jr., Esq., 1307 Pennsylvania Building, Philadelphia, Pa., counsel for claimant; Mrs. Emily M. Sullivan, 2429 West Hagert Street, Philadelphia, Pa., witness for claimant; and Henry J. Gibbons, Esq., 140 North Broad Street, Philadelphia, Pa., counsel for defendant.

13 Mrs. Sullivan, sworn.

By the REFEREE:

Q. What is your name?
A. Emily M. Sullivan.
Q. Where do you live?
A. 2429 West Hagert Street, Philadelphia.

Mr. GIBBONS. I object to her testimony, on the ground that there can be better testimony produced.

The REFEREE. Objection overruled and exception granted.

By Mr. SCOVILLE:

Q. Where is your son?
A. He is in New Orleans.
Q. Where did you hear from him last?
A. 1414 St. Charles Avenue.
Q. Did he or did he not make his residence with you when he was in Philadelphia?
A. He did.
Q. Do you remember the time he was injured?
A. I can't say exactly the day.
Q. Do you remember that he was injured?
A. Yes; I know that he was absolutely helpless for eight weeks.
Q. How many weeks was he unable to work?
A. He was helpless for eight weeks; he couldn't put his clothes on or anything, and after that his hands were crooked.
Q. Well, did he go back to work at the end of eight weeks?
A. No; he was afraid something would happen; it was eight weeks when the board was taken off his hand, and then he went down and worked after that.

Q. Then he went back to work at the end of eight weeks?

A. Yes.

I hereby certify that the proceedings, evidence, and findings are contained fully and accurately in the notes taken by me on the trial of the above case, and that this copy is a correct transcript of the same.

R. C. HUNSWORTH,
Official Stenographer.

The foregoing record of the proceedings of the above case is hereby approved and certified as correct.

C. W. BOSLER,
Referee, First District.

Philadelphia, Pa., Oct. 24, 1919.

The foregoing record of the proceedings of the above case is hereby approved and certified as correct.

C. W. BOSLER,
Referee, First District.

Philadelphia, Pa., Sept. 5, 1919.

Referee's award or disallowance of compensation.

PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY.

Workmen's Compensation Bureau, Harrisburg, Pa.

JOHN E. SULLIVAN, CLAIMANT,
vs.
UNITED STATES SHIPPING BOARD EMEGENCY FLEET CORPORATION, DEFENDANT.

Claim petition No. 7627.

Hearing held before Referee C. W. Bosler, first district, at 1115 North American Building, Philadelphia, Pa., on Friday, July 11th, 1919, at 1 p. m., at which there were present:

Samuel Scoville, jr., Esq., 1307 Pennsylvania Building, Philadelphia, Pa., counsel for claimant; Mrs. Emily M. Sullivan, 2429 West Hagert Street, Philadelphia, Pa., witness for claimant; and Henry J. Gibbons, Esq., 140 North Broad Street, Philadelphia, Pa., counsel for defendant.

DISCUSSION.

The claimant in this case filed a petition for compensation under the Pennsylvania Act, in accordance with the provisions thereof. The case was assigned to Referee Klauder on March 31, 1919, for investigation and determination, who duly scheduled it for hearing on April 17th, 1919, but subsequently postponed from time to time until July 11th, 1919, when the attorneys for the claimant and defendant appeared.

The attorney for the defendant did not deny any of the allegations set forth in the petition of the claimant, but argued that the Pennsylvania workmen's compensation bureau did not have jurisdiction in this case, as the claimant was a civil employee of the United States, and compensation should be paid the claimant in accordance with the Federal workmen's compensation act.

The attorney for the claimant argued that the accident happened within the Commonwealth of Pennsylvania, and the employer was a corporation which was legally liable for compensation under the Pennsylvania Workmen's compensation act.

The United States Shipping Board Emergency Fleet Corporation, who are the defendants in this case, filed a petition with the Pennsylvania workmen's compensation bureau asking permission to carry their own compensation insurance, which petition was duly granted. Since the granting of this petition, the United States Shipping Board Emergency Fleet Corporation have asked leave to intervene on all petitions for compensations against their agents within the Commonwealth of Pennsylvania, and, as a matter of fact, the compensation department of the United States Shipping Board Emergency Fleet Corporation have adjusted or defended all claims against their agents in Pennsylvania, namely the American International Shipbuilding Corporation, the Merchants Shipbuilding Corporation, Traylor Shipbuilding Corporation, &c.

There is only one conclusion that can be arrived at from the above facts, and that is that the United States Shipping Board Emergency Fleet Corporation having filed a petition to carry their
18 own compensation insurance, and having assumed liability for compensation of their agents under the Pennsylvania workmen's compensation act, they are necessarily liable for compensation for their own employees.

FINDINGS OF FACT.

1. That on October 10th, 1918, John E. Sullivan was in the employ of the United States Shipping Board Emergency Fleet Corporation as a chauffeur.

2. That on October 10th, 1918, neither the claimant nor the defendant had filed with the workmen's compensation bureau, nor served notice on the other, of their rejection of Article III of the workmen's compensation act of 1915, in accordance with the provisions thereof.

3. That on October 10th, 1918, while in the course of his employment with the defendant, the claimant met with an accident when the truck which he was driving collided with another truck at Twelfth Street and Columbia Avenue, Philadelphia, causing fracture of the right hand and contusions and bruises of the right hip.

4. That on October 10th, 1918, and for some time previous thereto, the claimant received an average weekly wage of $17.60.

5. That the claimant was totally disabled from October 10th, 1918, up to December 27th, 1918, when he returned to work.

6. That the defendant had due notice of the occurrence of the accident.

7. That the claimant spent $18 for medical, surgical, and hospital services, medicines, and supplies, of which the defendant paid nothing.

19 CONCLUSIONS OF LAW.

The referee concludes as a matter of law, and on the facts recited above, that the claimant is entitled to compensation under the workmen's compensation act of Pennsylvania.

AWARD.

Under Article III, section 306, compensation is awarded against the defendant as follows:

To John E. Sullivan, 50 per cent of his average weekly wage of $17.60, or $8.80 per week, from October 24th, 1918, up to and including December 26th, 1918.

C. W. BOSLER,
Referee First District.

Philadelphia, Pa., September 5th, 1919.

20 Received Sept. 18, 1919. Workmen's compensation board. Referred to ———, at Hbg. Filed at Phila., Sept. 16.

Appeal from referee alleging error of law.

(Section 419.)

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Bureau, Harrisburg, Pa.

Claim Petition No. 7627.

JOHN E. SULLIVAN, CLAIMANT.

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, DEFENDANT.

SEPTEMBER 16, 1919.

To the workmen's compensation board, Harrisburg, Pa.:

I hereby appeal from the award of C. W. Bosler, referee of the first compensation district, and specify the following errors of law

committed by the said referee and the following particulars in which the award does not conform to the provisions of the workmen's compensation act of 1915, because of his conclusion of law as follows:

"The referee concludes as a matter of law, and on the facts recited above, that the claimant is entitled to compensation under the workmen's compensation act of Pennsylvania."

G. J. BARRETT,
Manager Insurance Department, United States Shipping Board Emergency Fleet Corporation,
140 N. Broad St., Phila., Pa.

NOTICE.—This appeal must be filed within 10 days after service of the notice of the referee's award or disallowance of compensation.

(See rules printed on other side.)

21 RULES FOR APPEAL TO BOARD FROM DECISION OF REFEREE.

When an appeal is taken from the decision of a referee on question of fact or law, the appellant must set forth specifically and fully the errors of which he complains, and shall specify whether he desires the case to be heard:

(a) Without argument,

(b) On briefs submitted,

(c) On oral or written argument in person or by counsel.

Appeals shall be heard without the appearance of the parties in person or by counsel, unless the appellant shall at the time of filing his appeal notify the board that he desires to appear in person or by counsel, or the appellee shall within five days after notice of the appeal has been served upon him notify the board that he desires to appear in person or by counsel.

The appellant may file a written brief of argument at any time within ten days after the date of filing his appeal and appellee may file a written brief of argument within ten days after notice of the appeal has been served upon him.

All cases in which either party has notified the board that he desires to appear in person or by counsel will be heard at the sitting of the board held by it in the district in which the case originated next following the expiration of ten days after the service of notice upon the adverse party, provided, however that if the parties shall petition the board to hear the appeal in any district other than that in which the case originated, the board shall fix the hearing at its next meeting within such district.

If neither party has notified the board of his desire to appear in person or by counsel, the board will consider the appeal at the next meeting or sitting held by it after the expiration of ten days from the date of service of notice of appeal upon the appellee.

22 *Notice of appeal from referee.*

(Sec. 419–420–421.)

Pennsylvania Department of Labor and Industry.

Workmen's Compensation Board.

Claim Petition No. 7627.

Compensation Agreement No. ——.

Appeal No. 1318.

JOHN E. SULLIVAN, CLAIMANT,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, DEFENDANT.

HARRISBURG, PA., *Sept. 19, 1919.*

To Samuel Scoville, jr., Esq., 1307 Pennsylvania Bldg., Philadelphia, Pa.

The workmen's compensation board notifies you that the defendant in above case has taken an appeal from the award of compensation by Referee Bosler in the above case, copy of which is enclosed herewith. (See note at bottom of page.)

You should advise promptly whether you desire the appeal to be heard

(a) without argument on your part:

(b) on brief to be submitted:

(c) on oral argument in person or by counsel.

If request to submit argument or brief is not made by either party the appeal will be considered by the board at its first meeting after receipt of transcript of testimony from the referee.

WORKMEN'S COMPENSATION BOARD,
Secretary.

NOTE.—When appeal is filed in duplicate, copy of same will be furnished with this notice. Otherwise, if copy is desired it should be obtained from the appellant.

23 Pennsylvania Department of Labor and Industry, Workmen's Compensation Board.

Notice of hearing of appeal.

HARRISBURG, PA., *Nov. 5, 1919.*

JOHN E. SULLIVAN, CLAIMANT,
vs.
U. S. SHIPPING BOARD EMERGENCY Fleet Corp., defendant.
} Claim Petition No. 7627. Compensation agreement No. . Appeal No. 1318.

To Samuel Scoville, jr., Esq., 1307 Penna. Bldg., Philadelphia, Pa.

Notice is hereby given that the workmen's compensation board will hear argument on appeal from decision of referee in above case at Philadelphia, 11th floor, North American Building, Tuesday, November 11, 1919, at 2.30 p. m.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD,
——— ———, *Secretary.*

Original copy of this notice served by mail as per date and address hereon.

LEE SOLOMAN, *Secretary.*
Per D.

24 Pennsylvania Department of Labor and Industry, Workmen's Compensation Board.

Notice of hearing of appeal.

HARRISBURG, PA., *Nov. 5, 1919.*

JOHN E. SULLIVAN, CLAIMANT,
vs.
U. S. SHIPPING BOARD EMERGENCY Fleet Corp., defendant.
} Claim Petition No. 7627. Compensation agreement No. . Appeal No. 1318.

To Henry J. Gibbons, Esq., 140 N. Broad St., Philadelphia, Pa.

Notice is hereby given that the workmen's compensation board will hear argument on appeal from decision of referee in above case at Philadelphia, 11th floor, North American Building, Tuesday, November 11, 1919, at 2.30 p. m.

Please acknowledge receipt of this notice.

WORKMEN'S COMPENSATION BOARD,
———— ————, *Secretary.*

Original copy of this notice served by mail as per date and address hereon.

LEE SOLOMON, *Secretary.*
Per D.

25 Department of Labor and Industry.

Workmen's Compensation Board, Harrisburg, Penna.

Claim Petition No. 7627.

JOHN E. SULLIVAN, CLAIMANT, c/o PENNSYLVANIA RAILROAD COMPANY, Camden, N. J.

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, defendant, 140 North Broad Street, Philadelphia.

Appeal by defendant from award of compensation by Referee Bosler, district No. 1.

Appellant's counsel: Henry J. Gibbons, Esq., 140 North Broad Street, Philadelphia.

Appellee's counsel: Samuel Scoville, jr., Esq., 1307 Pennsylvania Building, Philadelphia.

MACKEY, Chairman. Opinion.

In this case the claimant, a chauffeur, while in the employ of defendant, on October 10th, 1918, met with an accident when the truck which he was driving collided with another truck at Twelfth and Columbia Avenue, Philadelphia, causing fracture of the right hand and contusions and bruises of the right hip. The referee awarded claimant compensation for said injuries. An appeal has been taken by defendant whereby it is contended that the workmen's compensation act of Pennsylvania does not have jurisdiction of this case, as the claimant was a civil employee of the United States and compensation should be paid him under the Federal workmen's compensation act.

The United States Shipping Board Emergency Fleet Corporation, defendant herein, through its agent, American International Shipbuilding Corporation, filed a petition with the Pennsylvania Workmen's Compensation Board asking permission to carry their own insurance, which petition was granted. The said petition provided, inter alia, as follows:

"The undersigned, an employer of labor in the State of Pennsylvania, hereby applies for the privileges of being exempt from the necessity of insuring the payment of compensation as provided in the workmen's compensation act of 1915, and submits the following facts to the workmen's compensation board in support of such application:

"That by an 'Act to establish a United States Shipping Board * * *,' approved September 7th, 1916, * * * the Congress of the United States created the United States Shipping Board, and authorized the board to purchase, construct, charter, lease, and operate vessels, and further authorized said board, if in its judgment

such action was deemed necessary to carry out the purposes of said act, to form under the laws of the District of Columbia one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States; that under and pursuant to the authorization in said act the United States Shipping Board formed the United States Shipping Board Emergency Fleet Corporation, with a capitalization of $50,000,000, all of the stock of which is owned
26 by the United States, represented by the United States Shipping Board * * *. That on the thirteenth day of September, 1917, the United States Shipping Board Emergency Fleet Corporation, representing the United States, entered into an agreement with the American International Corporation, a New York corporation, by the terms of which the United States Shipping Board Emergency Fleet Corporation appointed the American International Corporation its agent and authorized and directed it to construct certain vessels * * *. That on the twenty-eighth day of September, 1917, the American International Corporation, by and with the consent of the United States Shipping Board Emergency Fleet Corporation, designated applicant, a Delaware corporation, all of the stock of which is owned by the American International Corporation, to perform all of the work to be performed under the agreement of September 13th, 1917, which is now performing said work and building said vessels at Hog Island * * *; that the American International Corporation and the United States Shipping Board Emergency Fleet Corporation, representing the United States, are obliged in writing by said contracts of September 13th, 1917, and September 28th, 1917, to pay all of the cost of said vessels, including the payment of all compensation due workmen in its employ by reason of injuries sustained by them."

The petition also recited the mode in which the insurance fund will be created and carried out. The petition for self-insurance is signed: "American International Shipbuilding Corporation, Agent, United States Shipping Board Emergency Fleet Corporation representing the United States, by F. Holbrook, pres. Approved: United States Shipping Board Emergency Fleet Corporation representing the United States, by Howard Coonley, vice president." It may also be noticed that since the granting of the petition for self-insurance the
27 United States Shipping Board Emergency Fleet Corporation has asked leave to intervene on all petitions for compensation against their agents within the Commonwealth of Pennsylvania, and the compensation department of the United States Shipping Board Emergency Fleet Corporation have adjusted or defended all claims against their agents in Pennsylvania, namely: The American International Shipbuilding Corporation, the Merchants Shipbuilding Corporation, Traylor Shipbuilding Corporation, etc.

In view of the fact that the above petition is on file among the records of the compensation bureau and not in evidence, we grant a

hearing de novo for the purpose of reconsidering the case in the light of the allegations in this petition.

HARRY A. MACKEY, *Chairman.*

December 15th, 1919.

28 DECEMBER 18, 1919.

A–1318.

SULLIVAN
v.
U. S. SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Samuel Scoville, jr., Esq., 1307 Pennsylvania Bldg., Philadelphia.

MY DEAR SIR: Enclosed find decision of the compensation board, filed this day, in the above case.

Very truly, yours,

Secretary.

F.

29 DECEMBER 18, 1919.

A–1318.

SULLIVAN
v.
U. S. SHIPPING BOARD EMERGENCY FLEET CORPORATION.

Henry J. Gibbons, Esq., 140 N. Broad St., Philadelphia.

MY DEAR SIR: Enclosed find decision of the compensation board, filed this day, in the above case.

Very truly, yours,

Secretary.

F.

30 Pennsylvania Department of Labor and Industry, Workmen's Compensation Bureau, Harrisburg, Pa.

Notice of hearing of the case de novo.

HARRISBURG, PA., *December 31, 1919.*

JOHN E. SULLIVAN,
vs.
U. S. SHIPPING BOARD EMER. FLEET CORP., defendant.

Claim petion No. 7627.
Compensation agreement No.
File No. A–1318.

To Henry J. Gibbons, Esq., 140 North Broad St., Philadelphia, Pa.

You are hereby notified that a hearing de novo will be held before the workmen's compensation board in this case at 2.00 p. m., Friday, January 9, 1920, at 1115 North American Bldg., Philadelphia, Pa.

At this hearing the testimony heretofore taken before the referee in this case, or any portion thereof, may be adopted, by agreement of the parties, with permission to either side to offer additional testimony.

It you fail to appear the case will be heard in your absence.

WORKMEN'S COMPENSATION BOARD,
——— ———, *Secretary.*

Original copy of this notice served by mail as per date and address hereon.

LEE SOLOMON, *Secretary.*
Per G.

31 Pennsylvania Department of Labor and Industry, Workmen's Compensation Bureau, Harrisburg, Pa.

Notice of hearing of the case de novo.

HARRISBURG, PA., *December 31, 1919.*

JOHN E. SULLIVAN, CLAIMANT,
v.
U. S. SHIPPING BOARD EMER. FLEET CORP., DEFENDANT.
Claim petition No. 7627.
Compensation agreement No.
File No. A–1318.

To Samuel Scoville, jr., Esq., 1307 Pennsylvania Bldg., Philadelphia, Pa.

You are hereby notified that a hearing de novo wll be held before the workmen's compensation board in this case at 2.00 p. m., Friday, January 9, 1920, at 1115 North American Bldg., Philadelphia, Pa.

At this hearing the testimony heretofore taken before the referee in this case, or any portion thereof, may be adopted, by agreement of the parties, with permission to either side to offer additional testimony.

If you fail to appear, the case will be heard in your absence.

WORKMEN'S COMPENSATION BOARD,
———— ————,
Secretary.

Original copy of this notice served by mail as per date and address hereon.

LEE SOLOMON, *Secretary.*
Per G.

32 No. A-1318.

JOHN E. SULLIVAN, CLAIMANT,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, DEFENDANT.

Hearing de novo before the workmen's compensation board, eleventh floor, North American Building, Philadelphia, Pa., January 9th, 1920, at 2.30 p. m.

Present: Samuel Scoville, jr., Esq., for the claimant; Henry J. Gibbons, Esq., for the defendant.

Mr. SCOVILLE. I want to offer in evidence petition of the United States Shipping Board Emergency Fleet Corporation asking leave to intervene on all petitions for compensation of their agents within the Commonwealth of Pennsylvania.

The REFEREE. We will introduce that from our own records. We will make a note of this, because we don't want it all placed on record because it is very long. We will consider it.

Mr. SCOVILLE.—I will state to the board just as I said the last time, there is nothing in this case which takes it out of the law of the State of Pennsylvania. The act here provides that any citizen of the State of Pennsylvania who is injured within the confines of this Commonwealth shall receive compensation. The Shipping Board have recognized that, because they have filed a petition heretofore in which they ask to intervene. Here is a man who was employed indirectly by them as a chauffeur; he was injured and claims eight weeks' wages, the sum of $80. Their proposition is, in spite of the fact he was injured in the State of Pennsylvania, that this is a corporation doing business in the State of Pennsylvania, that this man is a citizen of the State of Pennsylvania, and in spite of the direct allegations of the act, direct statements of the act, nevertheless, this man has to go out of this jurisdiction—has to start these proceedings all over in Washington or wherever the Federal compensation goes. My contention is very simple; I don't know whether he has any claim under the Federal act, but he certainly has under the State compensation act. At the time this action arose my friend, Mr. Gibbons, says the stock was held by the United States Government.

Mr. GIBBON. It has always been held from the start.

Mr. SCOVILLE. I would like to have evidence offered on that, but as a matter of fact, if the Government or anyone else organizes separate corporations like the United States Shipping Board Emergency Fleet Corporation, and comes into a separate Commonwealth, they are, ipso facto, bound by the laws of that State. After getting that leave they now say to a man, one of our own people, in spite of the fact that we come in and ask leave to carry our own insurance you have to go down and start your hearing all over again. The practi-

cal effect is this, the man's time and various formalities of the Federal act itself will have to be gone through, and it is too late: if he doesn't get his money here he doesn't get in at all. This acci-
34 dent happened a year and a half ago and the man is still waiting for his money. As I said at the beginning, if the Shipping Corporation was sincere in their contention, it would have been a simple matter to say to the man, here, you are injured, here is your $10 a week. They did not say a word: they discharged the man and he had to bring suit for his money, and there was a hearing before the referee, and it was held he was entitled to recover, and it came before your honor and you ask for a hearing de novo.

The REFEREE. This case only involves the principle.

Mr. SCOVILLE. There is no question about the fact the man was hurt and that $80 was due him, but they say it is too late to do it now, but you have to do this. Why didn't they give it to the man if it is due him? What will happen in this case, if your honor decides he had to do it, he will lose everything. I call your honor's attention to the decisions. In the first place I don't have to go outside of the act. There are no exceptions. If there was to be any exceptions the act which incorporated this United States Shipping Board would have said all employees of this board come under the Federal compensation act, or they would have passed a statute to that effect. This man comes directly under the provisions here, to wit, a citizen of the State of Pennsylvania, an employee employed in the State of Pennsylvania, and the accident happened in the State of Pennsylvania. Does the act give any exceptions? Not at all. Does the Federal act give any exception? Not one. I say the man's rights can not be taken away by inference.

The REFEREE. This occurs to me in your favor, isn't all that is before this board: here is an accident happening with an employee of a corporation doing business in the State of Pennsylvania. Why should it be the duty of the board, either a duty or a right, to inquire as to who owns the stock in that corporation.

Mr. SCOVILLE. That is my point. I don't think it has any bearing at all. I know at that time a block of it was held by someone else.

By the REFEREE:

Q. What relation is the United States Shipping Board
35 Emergency Fleet Corporation to the American International Shipping Board?

By Mr. GIBBONS:

A. There are two, the American International Corporation and the American International Shipbuilding Corporation.

Q. The American International Shipping Corporation, that is one of three is it?

A. That is one of two corporations that are practically the same.

Q. What is the Merchants?

A. That is a separate corporation but have the same contractual relations.

Q. It is your allegation that it is the intention of the United States Shipping Board Emergency Fleet Corporation to administer self-insurance in the following manner:

(Reads.)

A. That is right.

Q. This was a petition of the American International as the agent of the United States Shipping Board Emergency Fleet Corporation?

A. Yes.

Q. The United States Shipping Board did not appear in this petition?

A. Except there is an approval by them at the bottom.

Q. Now, Mr. Gibbons, as a board we have a corporation coming before us doing business within our State; what ultimate difference does it make to us who owns that stock, whether individuals or the Government?

A. It makes a difference as far as the Federal Government is concerned.

Q. It may make some difference to the Federal Government, but what difference does it make to the board?

A. No agency of the State can tax any agency of the Federal Government; that is the answer to the question.

Q. The Government owns all the stock?

A. Yes; the Federal Government is exempt from any taxation by the State or subdivisions thereof. This is the Federal Government.

36 Q. Mr. Gibbons, when the Employers' Liability Insurance Corporation carried this risk before we granted the right of self-insurance, didn't the policy of the Employers' Liability Insurance Corporation cover all the employees of every name and nature?

A. No; only those of the American International—they had insurance carried with them first before this change was made.

Q. I have the case before me of John L. Harrigan against the United States Shipping Board Emergency Fleet Corporation, 140 North Broad Street. At that time the Employers' Liability Insurance Corporation was the insurance carrier and came in and defended that case, and that was an action for compensation for an accident claimed by the claimant which occurred on the public streets in the city of Philadelphia.

A. I think you will find out he was an employee of Hog Island, but the American International had offices on the ninth and tenth floors and sometimes cases have been brought against the American International and the Fleet Corporation has been cited as defendant.

Q. Mr. Gibbons, I just don't exactly follow you as to the importance of the issue involved. If this is a United States liability, what particular difference does it make what part of your money chest is tapped?

A. It makes this difference, if we get an order here we can not pay the amount because the Controller of the Treasury has ruled, in conformity with the act of Congress, when money is appropriated for specific purposes premiums for compensation insurance were not

an element which could be paid. If the board should make an award we could not pay, and Mr. Scoville would attempt to collect the money.

Q. Is this the first man who was ever hurt?

A. This is the first employee of the Fleet Corporation that has come before the workmen's compensation board. A lot of them have been before the Federal compensation act.

Q. If this is the United States Government we are dealing with now, do you stand here in your professional capacity as a representative of the Attorney General of the United States or as a private counsel for this corporation?

37

A. As both. The Attorney General has authorized the legal division of the Emergency Fleet Corporation of the United States Shipping Board in Washington to appear in various capacities, because it would be impossible for the Attorney General's office to cover all the ground.

Q. The Attorney General has refused to rule whether your position in this matter is right or not?

A. He said the matter would have to come before him in an individual case.

38

Department of Labor and Industry.

Workmen's Compensation Board, Harrisburg, Pa.

Claim petition No. 7627.

JOHN E. SULLIVAN, CLAIMANT, C/O PENNSYLVANIA RAILROAD, COMPANY, CAMDEN, N. J.

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, DEFENDANT, 140 NORTH BROAD STREET, PHILADELPHIA.

Appeal by defendant from award of compensation by Referee Bosler, district No. 1.

Appellant's counsel: Henry J. Gibbons, Esq., 140 North Broad Street, Philadelphia.

Appellee's counsel: Samuel Scoville, jr., Esq., 1307 Pennsylvania Building, Philadelphia.

Hearing de novo held at Philadelphia, January 9th, 1920.

Opinion.

MACKEY, *Chairman.*

In this case a hearing de novo was granted December 15th, 1919, which was heard before the board on January 9th, 1920. No testimony was taken at the hearing de novo—the accident being conceded and the facts relating thereto. The defendant urges that the referee erred in his conclusion of law awarding compensation to claimant on the ground that the claimant was a civil employee of the United States at the time of the accident, and

39

therefore we had no jurisdiction to award compensation, but that compensation should be paid claimant under the Federal workmen's compensation act.

The United States Shipping Board Emergency Fleet Corporation was incorporated April 16th, 1917, under the laws of the District of Columbia under authority of section 11 of the shipping act of September 7th, 1916 (39 U. S. Statutes at Large 728). The shipping act provided that at least a majority of the stock of this corporation should at all times be held by the United States of America.

The said corporation came into this State and entered into contracts with certain other corporations, namely, the American International Shipbuilding Corporation and others, for the building of ships. The American International Shipbuilding Corporation, as an agent of the United States Shipping Board Emergency Fleet Corporation, filed a petition with the workmen's compensation board asking permission to carry its own insurance, which petition was granted. While it is true that this petition is not made directly by the defendant, nevertheless the defendant appears to have approved of said petition and joined in the same by its proper officers. Indeed it appears in the records of this board that the defendant in this case has asked leave to intervene in all cases for compensation against their agents, including the American International Shipbuilding Corporation, the Merchant Shipbuilding Corporation, and the Traylor Shipbuilding Corporation, and said defendant has paid or defended all claims arising against their agents in Pennsylvania. In the case of Harrigan vs. United States Shipping Board Emergency Fleet Corporation, 4 Dept. Rep. 2652, this present defendant raised no question that it was exempt from liability on the ground that the claimant in that case was a civil employee of the United States. In the case at bar there is no evidence that claimant was a civil employee of the United States or that he received his wages through the United States Treasury. We can not infer that such was the case. Aside from this, however, the present contention of the defendant seems to be inconsistent with its position in other cases before this board as above outlined. In our judgment the crux of the case is: Is the defendant, as a corporation, irrespective of the ownership of its stock, having come into the jurisdiction of Pennsylvania, as an employer of labor in Pennsylvania, employing citizens of the State of Pennsylvania, liable to its employees under our compensation act?

The compensation act of 1915, article 1, section 1, provides inter alia that it "shall apply to all accidents occurring within this Commonwealth"—it further provides that the term "employer" as used in the act shall include corporations both for profit and not for profit. The term "employe" as used in this act includes all natural persons who perform services for another for valuable considerations, excluding casual employees. The law thus provides that every natural person injured while working for a valuable consideration in this Commonwealth for a corporation shall be entitled to compensation

under the compensation act unless his employer or he has waived the provisions of the said act. The accident in this case happened within this Commonwealth by an employee of a corporation coming to this Commonwealth to transact business, and if injured he has a right to claim compensation under our act, unless there is some statute or decision to the contrary. In all the cases submitted by counsel for the defendant there is no case similar to the case at bar. We do not care to enter into a discussion of the various cases under the view we have taken of the case. The language of Judge Dickinson, however, in the case of Commonwealth Finance Corporation vs. Philip Landis, defendant, and Emergency Fleet Corporation, garnishee, U. S. District Court, E. D. of Pa., June sessions, 1919, No. 6326, in discussing the rights of the garnishee, the present defendant in this case, said:

41 "The Fleet Corporation may be acting as such agent of the United States or may not be so acting, or it may so act in some of its activities and not in others. It follows from this that when it is acting as the United States and such of its property and assets as are in the actual use of the United States neither it as such agent nor such property can be drawn into or jeopardized by disputes between private parties. It would also follow, however, that in so far as it is acting as a private corporation, and in so far as its property and assets are and are used as its private property, it is not immune from the liabilities and responsibilities which are imposed by law upon litigants."

While it might be difficult to draw the exact line of demarcation as to when the defendant is acting as a private corporation or is acting for the United States, the burden would be on the defendant to prove if it were acting for the United States that it would be exempt—there is no defense of this kind interposed in this case. We only have the question of law raised by defendant that the Pennsylvania Workmen's Compensation Board has no jurisdiction. We can not agree with this. In conclusion we hold: That we have jurisdiction, on the ground that the defendant doing business as a corporation in the State of Pennsylvania, an employer of labor in the State of Pennsylvania, is liable for compensation to the claimant in this case under our act. It is neither our duty nor privilege to make a collateral investigation as to the ownership of the defendant's capital stock.

The findings of fact and conclusions of law of the referee are affirmed and the appeal dismissed.

WORKMEN'S COMPENSATION BOARD,
HARRY A. MACKEY,
Chairman.
PAUL W. HOUCK,
Commissioner.
BENJAMIN JARRETT,
Commissioner.

FEBRUARY 5th, 1920.

42 In the court of common pleas, No. —, of the county of Philadelphia, of December term, 1918. No. —.

Received Feb. 17, 1920. Workmen's Compensation Board. Referred to ———.

IN THE MATTER OF JOHN E. SULLIVAN *vs.* UNITED STATES SHIPPING BOARD EMERGENCY Fleet Corporation, by (signed) Robert Lyons Hague, director of division of construction of repairs, ——— appellant.	Bureau of Workmen's Compensation. Claim petition No. 7627.

United States Shipping Board Emergency Fleet Corporation appeals from the decision of the workmen's compensation board made on February 5th, 1920, on the claim above mentioned.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

(Signed) Robert Lyons Hague on oath says that he is the director of the division of construction of repairs of the United States Shipping Board Emergency Fleet Corporation, and duly authorized in that capacity to execute documents of this nature, and that this appeal is not taken for the purpose of delay, but because the appellant believes that the United States Employees' Compensation Commission has exclusive jurisdiction, and that an injustice has been done to the interest of the United States of America by the decision appealed from.

(Signed) ROBERT LYONS HAGUE.

Sworn and subscribed before me this 13th day of February, 1920.

[SEAL.] (Signed) ELEANOR L. JAQUETTE,
Notary Public.

Commission expires Feby. 21, 1923.

43 In the Court of Common Pleas, No. —, of the county of Philadelphia, of December term, 1918, No. —.

IN THE MATTER OF JOHN E. SULLIVAN *vs.* UNITED STATES SHIPPING BOARD EMERGENCY Fleet Corporation, by Robert Lyons Hague, director of division of construction of repairs, ———, appellant.	Bureau of Workmen's Compensation. Claim petition No. 7627.

To the honorable judges of the said court:

United States Shipping Board Emergency Fleet Corporation, representing the United States of America, excepts to the decision of the Workmen's Compensation Board of Pennsylvania on claim petition No. 7627, filed by John E. Sullivan, for the following reasons:

1. Because the said John E. Sullivan is an employee of the United States of America.

2. That he received his compensation by payment directly from the Treasurer of the United States from appropriations under various urgent efficiency acts for the cost of building ships.

3. Because the United States Employees' Compensation Commission has exclusive jurisdiction in compensation cases of this sort.

4. Because the Workmen's Compensation Board of Pennsylvania erred in accepting jurisdiction in this matter, as its attention had been called to the fact that various United States District Courts as well as administrative bodies of the Federal and State Governments, including the Attorney General of the United States, the Comptroller of the Treasury, the United States Employees Compensation Commission, the comptroller of the State of New York, the State board of taxation of New Jersey, the United States Commissioner of Internal Revenue, and other bodies and officials had decided that the United States Shipping Board Emergency Fleet Corporation is an arm of the United States Government acting in a representative capacity exercising powers delegated to it by the President of the United States and expending only money appropriated to it by the Congress of the United States.

5. Because the Workmen's Compensation Board of Pennsylvania erred in confirming the award of the referee on behalf of the said claimant.

FRANCIS FISHER KANE,
United States Attorney.

HENRY J. GIBBONS,
Assistant Counsel United States Shipping Board Emergency Fleet Corporation.

Certified from the record this 16th day of February, A. D. 1920.
[SEAL.]

R. M. SNYDER,
Pro prothy.

44 (Endorsement:) 6179. Copy. John E. Sullivan *vs.* United States Shipping Board Emergency Fleet Corporation. Dec. term, 1919. C. P. No. 2. Exceptions on appeal and affidavit. Filed Feb. 14, 1920. Rains, pro. prothy. Pd. 1.50. Copy. Francis Fisher Kane, Henry J. Gibbons, Post Office Building, Phila., Pa.

45 *Certiorari workmen's compensation board.*

Received Feb. 17, 1920. Workmen's compensation board. Referred to ———.

THE COMMONWEALTH OF PENNSYLVANIA,
City and county of Philadelphia, ss:

To the workmen's compensation board, greeting:

We being willing, for certain causes, to be certified of a certain action between John E. Sullivan, claimant, and United States Ship-

ping Board Emergency Fleet Corporation, defendant and insurance carrier, before you depending, do command you, within ten days after service hereof, to certify to our Court of Common Pleas, No. 2, at Philadelphia, the entire record as before you they now remain, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws and constitution of this Commonwealth ought to be done.

Witness the Honorable Norris S. Barratt, president judge of our said court, at Philadelphia, the 14 day of February, in the year of our Lord one thousand nine hundred twenty (1920).

[SEAL.] HENRY F. WALTON,
Prothonotary.
By SOLOMON RAINS.

(Endorsement:) 6179. Dec. term, 1919. Court of Common Pleas, No. 2, county of Philadelphia. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corporation. Certiorari to workmen's compensation board. F. F. Kane, H. J. Gibbons.

46 I hereby certify that the foregoing is a true and complete transcript of the record in the case of John E. Sullivan vs. United States Shipping Board Emergency Fleet Corp., being proceedings under claim petition #7627 in the bureau of the Workmen's Compensation Board of Pennsylvania.

HARRY A. MACKEY, *Chairman.*

Attest:
[SEAL.] LEE SOLOMON,
Secretary of the Board.

47 (Endorsement:) #6179. Dec. term, 1919. C. P. No. 2. In the Court of Common Pleas of Philadelphia County. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corp. Certified copy of transcript of the record, being proceedings under claim petition #1318, in the bureau of the Workmen's Compensation Board of Pennsylvania. Filed Feb. 26, 1920. Hanna, Pro. Prothy.

48 Workmen's Compensation Board.
Department of Labor and Industry,
Harrisburg.

H. B.

Hon. Henry F. Walton,
Proth'y. Common Pleas,
City Hall,
Philadelphia.

(Deliver.)

Filed Feb. 26, 1920. ———, Proprothy.

~~Department of Labor and Industry,~~
~~Masonic Temple,~~
~~Harrisburg.~~

Dec. Term, 1919. C. P. No. 2. C. P. No. 2.
H. B. Filed Feb. 26, 1920. Ott, Proprothy.
From Workmen's compensation bureau.
=6179.

49 In the Court of Common Pleas, No. —, of the county of Philadelphia, of December Term, 1919. No. —.

IN THE MATTER OF JOHN E. SULLIVAN, *vs.* UNITED STATES SHIPPING BOARD, Emergency Fleet Corporation, appellant.	Bureau of Workmen's Compensation. Claim petition No. 7627.

Notice of appeal from decision of Workmen's Compensation Board of Pennsylvania.

Petition for leave to substitute corrected notice of appeal.

To the honorable judges of the said court:

The petition of the defendant in the above case respectfully represents:

1. That the notice of appeal from the decision of the Workmen's Compensation Board of Pennsylvania upon claim petition No. 7627, filed February 14th, 1920, contained several typographical errors.

2. That these errors were due to the carelessness in following instructions and in preparing this notice of appeal on the part of the law clerk of the defendant.

3. That they were as follows:

(a) The insertion after the name of the defendant in the caption of "By ————, director of division of construction of repairs."

(b) The use of the word "of" between the words "Construction" and "Repairs" at the end of the second line of the jurat of the notice of appeal.

(c) The omission of the signature of the director of division of construction and repairs of the defendant at the end of the notice of appeal and above the affidavit thereto.

Your petition prays that a corrected notice of appeal may be substituted for that containing the errors above pointed out.

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
By HENRY J. GIBBONS,
Assistant Counsel.

50 COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Henry J. Gibbons, being duly sworn according to law, proposes and says that he is assistant counsel of the United States Shipping Board Emergency Fleet Corporation, and duly authorized in that capacity to execute documents in this nature, and that the facts set forth in the foregoing petition are true.

Sworn and subscribed before me this 5th day of March, 1920.

HENRY J. GIBBONS.

And now, April 20, 1920, on motion of Henry J. Gibbons, assistant counsel for the United States Shipping Board Emergency Fleet Corporation, representing the United States of America, and upon consideration of the foregoing petition, the prothonotary is directed to substitute the notice of appeal to which this petition is attached for that filed February 14, 1920, in order that this may be filed in its place instead nunc pro tunc, and the prothonotary is further directed to transmit to the Workmen's Compensation Board of Pennsylvania a certified copy of the said substituted notice of appeal.

NORRIS S. BARRATT, *P. J.*

Entry of above order consented to.

SAMUEL SCOVILLE, JR.,
Atty. for Claimant.

51 In the Court of Common Pleas No. 2 of the county of Philadelphia, of December term, 1919, No. 6179.

IN THE MATTER OF JOHN E. SULLIVAN *vs.* UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, appellant.	Claim petition No. 7627. Bureau of Workmen's Compensation.

Notice of appeal from decision of Workmen's Compensation Board of Pennsylvania.

The United States Shipping Board Emergency Fleet Corporation appeals from the decision of the workmen's compensation board made on February 5, 1920, in the claim above mentioned.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
By ROBERT L. HAGUE,
Director of Division of Construction and Repairs.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

Robert L. Hague on oath says that he is the director of the division of construction and repairs of the United States Shipping Board Emergency Fleet Corporation, and duly authorized in that capacity to execute documents of this nature, and that this appeal is not taken for the purpose of delay, but because the appellant believes that the United States Employees' Compensation Commission has exclusive jurisdiction, and that an injustice has been done to the interest of the United States of America by the decision appealed from.

ROBERT L. HAGUE.

Sworn and subscribed before me this 14th day of February, 1920.
[SEAL.]
ELEANOR L. JAQUETTE,
Notary Public.

Commission expires Feby. 21, 1923.

52 In the Court of Common Pleas No. 2 of the County of Philadelphia, of December Term, 1919. No. 6179.

IN THE MATTER OF JOHN E. SULLIVAN *vs.* UNITED STATES SHIPPING BOARD EMERGENCY Fleet Corporation, appellant.	Bureau of workmen's compensation. Claim petition No. 7627.

To the honorable judges of the said court:

The United States Shipping Board Emergency Fleet Corporation, representing the United States of America, excepts to the decision of

the Workmen's Compensation Board of Pennsylvania on claim petition No. 7627, filed by John E. Sullivan, for the following reasons:

1. Because the said John E. Sullivan is an employe of the United States of America.

2. Because he received his compensation by payment directly from the Treasury of the United States from appropriations under various urgent deficiency acts for the cost of building ships.

3. Because the United States Employees Compensation Commission has exclusive jurisdiction in compensation cases of this sort.

4. Because the Workmen's Compensation Board of Pennsylvania erred in accepting jurisdiction in this matter, after its attention had been called to the fact that various United States District Courts as well as administrative bodies of the Federal and various State Governments, including the Attorney General of the United States, the Comptroller of the Treasury, the United States Employees Compensation Commission, the comptroller of the State of New York, the State board of taxation of New Jersey, the United States Commissioner of Internal Revenue, and other bodies and officials had decided that the United States Shipping Board Emergency Fleet Corporation is an arm of the United States Government, acting in a representative capacity, exercising powers delegated to it by the President of the United States, and disbursing only money appropriated to it by Congress of the United States.

5. Because the Workmen's Compensation Board of Pennsylvania erred in confirming the award of the referee on behalf of the said claimant.

FRANCIS FISHER KANE,
United States Attorney.
HENRY J. GIBBONS,
Assistant Counsel,
United States Shipping Board Emergency Fleet Corporation.

53 (Endorsement:) #6179. December Term, 1919. C. P. #2. John E. Sullivan *vs.* United States Shipping Board Emergency Fleet Corporation. Petition for leave to substitute corrected notice of appeal and notice of appeal of defendant from decision of Workmen's Compensation Board of Pennsylvania. Pd. 1.50. Filed Apr. 26, 1920. Brooks, pro. prothy. Francis Fisher Kane, United States Attorney. Henry J. Gibbons, Asst. counsel, U. S. S. B. E. F. C. for Dfts.

54

A-1318.

Department of Labor and Industry. Workmen's compensation board, Harrisburg, Pa.

Appeal by defendant from award of compensation by Referee Bosler, district No. 1.

JOHN E. SULLIVAN, CLAIMANT, % PENN'A R. R. Co., Camden, N. J., *v.* UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORP., Def't., 140 N. Broad Street, Philadelphia.	Claim petition No. 7627.

Appellant's counsel: Henry J. Gibbons, Esq., 140 N. Broad St., Philadelphia.

Appellee's counsel: Samuel Scoville, jr., Esq., 1307 Penn'a Bldg., Philadelphia.

Hearing de novo held at Philadelphia, January 9, 1920.

OPINION.

MACKEY, Chairman:

In this case a hearing de novo was granted December 15, 1919, which was heard before the board on January 9, 1920. No testimony was taken at the hearing de novo, the accident being conceded and the facts relating thereto. The defendant urges that the referee erred in his conclusion of law awarding compensation to claimant on the ground; that the claimant was a civil employe of the United States at the time of the accident, and, therefore, we had no jurisdiction to award compensation, but that compensation should be paid claimant under the Federal workmen's compensation act.

The United States Shipping Board Emergency Fleet Corporation was incorporated April 16, 1917, under the laws of the District of Columbia under authority of section 11 of the shipping act of September 7, 1916 (39 U. S. Statutes at Large, 728). The shipping act provided that at least a majority of the stock of this corporation should, at all times, be held by the United States of America.

55 The said corporation came into this State and entered into contracts with certain other corporations, namely, The American International Shipbuilding Corporation and others, for the building of ships. The American International Shipbuilding Corporation, as an agent of the United States Shipping Board Emergency Fleet Corporation, filed a petition with the workmen's compensation board asking permission to carry its own insurance, which petition was granted. While it is true that this petition is not made directly by the defendant, nevertheless the defendant appears to have approved of said petition and joined in the same by its proper officers. Indeed it appears in the records of this board, that the defendant in

this case has asked leave to intervene in all cases for compensation against their agents, including the American International Shipbuilding Corporation, the Merchant Shipbuilding Corporation, and the Traylor Shipbuilding Corporation, and said defendant has paid or defended all claims arising against their agents in Pennsylvania. In the case of Harrigan *v.* United States Shipping Board Emergency Fleet Corporation, 4 Dept. Rep., 2652, this present defendant raised no question that it was exempt from liability on the ground that the claimant in that case was a civil employe of the United States. In the case of bar there is no evidence that claimant was a civil employe of the United States of that he received his wages through the United States Treasury. We can not infer that such was the case. Aside from this, however, the present contention of the defendant seems to be inconsistent with its position in other cases before this board as above outlined. In our judgment the crux of the case is: Is the defendant, as a corporation, irrespective of the ownership of its stock, having come into the jurisdiction of Pennsylvania, as an employer of labor in Pennsylvania employing citizens of the State of Pennsylvania liable to its employees under our compensation act?

56 The compensation act of 1915, article 1, section 1, provides, inter alia, that it "shall apply to all accidents occurring within this Commonwealth"; it further provides that the term "employer" as used in the act shall include corporations both for profit and not for profit. The term "employe" as used in this act includes all natural persons who perform services for another for valuable considerations, excluding casual employes. The law thus provides that every natural person injured while working for a valuable consideration in this Commonwealth for a corporation shall be entitled to compensation under the compensation act unless his employer or he has waived the provisions of the said act. The accident in this case happened within this Commonwealth by an employe of a corporation coming to this Commonwealth to transact business, and if injured he has a right to claim compensation under our act unless there is some statute or decision to the contrary. In all the cases submitted by counsel for the defendant there is no case similar to the case at bar. We do not care to enter into a discussion of the various cases under the view we have taken of the case. The language of Judge Dickinson, however, in the case of Commonwealth Finance Corporation v. Philip Landis, defendant, and Emergency Fleet Corporation, garnishee, U. S. District Court, E. D. of Pa., June sessions, 1919, No. 6326, in discussing the rights of the garnishee, the present defendant in this case, said:

"The Fleet Corporation may be acting as such agent of the United States or may not be so acting, or it may so act in some of its activities and not in others. It follows from this that when it is acting as the United States and such of its property and assets as are in the actual use of the United States neither it as such agent nor such property can be drawn into or jeopardized by disputes between private parties. It would also follow, however, that in so far as it is acting as a private

corporation, and in so far as its property and assets are and are used as its private property, it is not immune from the liabilities and responsibilities which are imposed by law upon litigants."

57 While it might be difficult to draw the exact line of demarcation as to when the defendant is acting as a private corporation or is acting for the United States, the burden would be on the defendant to prove if it were acting for the United States that it would be exempt; there is no defense of this kind interposed in this case. We only have the question of law raised by defendant that the Pennsylvania Workmen's Compensation Board has no jurisdiction. We can not agree with this. In conclusion we hold that we have jurisdiction, on the ground that the defendant doing business as a corporation in the State of Pennsylvania, an employer of labor in the State of Pennsylvania, is liable for compensation to the claimant in this case under our act. It is neither our duty nor privilge to make a collateral investigation as to the ownership of the defendant's capital stock.

The findings of fact and conclusions of law of the referee are affirmed, and the appeal dismissed.

HARRY A. MACKEY,
Chairman.
PAUL W. HOUCK,
Commissioner.

Workmen's compensation board:

BENJAMIN JARRETT,
Commissioner.

February 5, 1920.

(Endorsement) 6179. D. 19. C. P. No. 2. Opinion of Mackey, chairman of workmen's compensation board. Filed, 5/12/20 H.

58 The Superior Court of Pennsylvania, sitting at Philadelphia.

THE COMMONWEALTH OF PENNSYLVANIA, *ss:*

To the judges of the Court of Common Pleas No. 2, for the county of Philadelphia, greeting:

We being willing for certain causes to be certified of the matter of the appeal of United States Shipping Board Emergency Fleet Corporation from the judgment of your said court at No. 6179, of Dec. term, A. D. 1919, wherein John E. Sullivan was plaintiff and the said appellant was defendant before you, or some of you, depending, do command you that the record and proceedings aforesaid, with all things touching the same, before the judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Philadelphia, the first Monday of October next (1920), so full and entire as in you' court before you they remain, you certify and send, together with this writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness, the honorable George B. Orlady, doctor of laws, president judge of our said Superior Court, at Philadelphia, the third

day of June, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.] RUDOLPH M. SCHICK,
Prothonotary, pro tem.

To the honorable the judges of the Superior Court of the Commonwealth of Pennsylvania, sitting at Philadelphia:

The record and process, and all things touching the same, so full and entire as before us they remain, we certify and send, as within we are commanded.

NORRIS S. BARRETT, [L. S.]
P. J. [L. S.]

No. 6179, Dec. term, 1919. C. P. No. 2, Phila. No. 186, October term, 1920. Superior Court John E Sullivan *v.* United States Shipping Board Emergency Fleet Corporation, appellant. Certiorari to the Court of Common Pleas No. 2, for the county of Philadelphia. Returnable the first Monday of October, 1920. Rule on the appellee to appear and plead on the return day of the writ. Rudolph M. Shick, prothonotary pro tem. June 4, 1920, brought into office. R. Richardson, prothy. Filed in Superor Court, Philadelphia, Jun. 8, 1920. Charles D. McAvoy, United States atty.

59 186. October Term, 1920.

186. Chas. D. McAvoy, United States Atty., Henry J. Gibbons, Wm. Y. C. Anderson, A. Mitchell Palmer. 9-9-20.	John E. Sullivan, plaintiff, *v.* United States Shipping Board Emergency Fleet Corporation, defendant. Appeal of defendant. No. 6179. December term, 1919, from the judgment.	Appeal from Court Common Pleas No. 2 of the county of Philadelphia. Filed June 3, 1920. Eo die certiorari exit. Retble. first Monday October 1920. June 8, 1920, record returned & filed. August 25, 1920, assignments of error filed. November 12, 1920, argued. March 5, 1921, award confirmed and the appeal dismissed at the costs of the appellant. Opinion by Keller, J. March 11, 1921, petition for allowance of appeal from Superior Court to Supreme Court filed. March 15, 1921, refused. Per curiam.

60 In the Superior Court of Pennsylvania sitting at Philadelphia.

Court of Common Pleas No. 2 of the county of Philadelphia, December Term, 1919.

JOHN E. SULLIVAN, PLAINTIFF,
vs.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET Corporation, appellant, defendant. } No. 6179.

Enter appeal on behalf of defendant from judgment of the Court of Common Pleas No. 2 of the county of Philadelphia.

CHARLES D. MCAVOY,
United States Attorney for Defendant.

COUNTY OF PHILADELPHIA, *ss:*

To William A. Stone, prothonotary, Superior Court, sitting at Philadelphia.

Geoffrey Creyke, assistant secretary of the defendant corporation, being duly sworn saith that said appeal is not taken for the purpose of delay, but because appellant believes it has suffered injustice by the judgment, from which it appeals.

GEOFFREY CREYSKE,
Assistant Secretary.

Sworn and subscribed this 2d day of June, A. D. 1920.

[SEAL.] (Signed) D. S. EDMONDS,
Notary Public.

Commission expires February 17, 1923.

No. 186. October Term, 1920. Superior Court of Pennsylvania, sitting at Philadelphia. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corporation, appellant. Appeal and affidavit. Charles D. McAvoy, United States Attorney, Attorney for Appellant. Filed in Superior Court June 3, 1920, Philadelphia.

61 In the Superior Court of Pennsylvania, October Term, 1920.

JOHN E. SULLIVAN, APPELLEE,
vs.
UNITED STATES SHIPPING BOARD EMERGECY FLEET Corporation, appellant. } No. 186.

To the prothonotary of the Superior Court:

Enter our appearance for the appellant in the above-entitled case. case.

HARRY J. GIBBONS.
WM. Y. C. ANDERSON.
A. MITCHELL PALMER.
Attorney General of the United States.

(Endorsement:)—In the Superior Court of Pennsylvania. October Term, 1920. No. 186. John E. Sullivan, appellee, vs. United States

Shipping Board Emergency Fleet Corporation, appellant. Filed in Superior Court September 9, 1920, Philadelphia. Præcipe for appearance. Wm. Y. C. Anderson, Henry J. Gibbons, C. D. McAvoy, U. S. Atty. A. Mitchell Palmer, U. S. Atty. Gl., counsel for appellant.

62 In the Superior Court of Pennsylvania.

(C. P. No. 2, Philadelphia County, December Term, 1919, No. 6179.)

JOHN E. SULLIVAN *vs.* UNITED STATES SHIPPING BOARD Emergency Fleet Corporation, appellant.	No. 186. October Term, 1920.

Assignments of error.

1. The court erred in not finding the defendant to be an agency or department of the United States Government.

2. The court erred in not finding the claim of the plaintiff to be under the exclusive jurisdiction of the United States Employees' Compensation Commission as that of a civil employee of the United States.

3. The court erred in confirming the award of compensation to the plaintiff by the Workmen's Compensation Board of Pennsylvania.

4. The court erred in dismissing the appeal of the defendant from the decision of the workmen's compensation board accepting jurisdiction over the plaintiff's claim.

5. The court erred in entering the following judgment:

"May 12th, 1920. Appeal dismissed and award confirmed on the opinion of Mackey, chairman of workmen's compensation board."

6. The court erred in adopting as its opinion that part of the opinion of the Workmen's Compensation Board of Pennsylvania which reads as follows:

"The said corporation came into this State and entered into contracts with certain other corporations, namely, The American International Shipbuilding Corporation and others for the building of ships. The American International Shipbuilding Corporation, as an agent of the United States Shipping Board Emergency Fleet Corporation, filed a petition with the workmen's compensation board asking permission to carry its own insurance, which petition was granted. While it is true that this petition is not made directly by the defendant, nevertheless the defendant appears to have approved of said petition and joined in the same by its proper officers. Indeed it appears in the records of this board, that the defendant in this case has asked leave to intervene in all cases for compensation against their agents, including the American International Shipbuilding Corporation, the Merchant Shipbuilding Corpora-

63 tion, and the Traylor Shipbuilding Corporation, and said defendant has paid or defended all claims arising against their agents in Pennsylvania."

7. The court erred in adopting as its opinion that part of the opinion of the workmen's compensation board of Pennsylvania which reads as follows:

"In conclusion we hold that we have jurisdiction, on the ground that the defendant doing business as a corporation in the State of Pennsylvania is liable for compensation to the claimant in this case under our act. It is neither our duty nor privilege to make a collateral investigation as to the ownership of the defendant's capital stock.

"The findings of fact and conclusions of law of the referee are affirmed and the appeal dismissed."

8. The court erred in not taking judicial notice of the act of Congress approved March 9th, 1920 (Public No. 156, 66th Congress), known as the suits in admiralty act.

(Signed) HENRY J. GIBBONS,
WM. Y. C. ANDERSON,
Assistant Counsel United States Shipping Board Emergency Fleet Corporation.
CHARLES D. MCAVOY,
United States Attorney.
A. MITCHELL PALMER,
Attorney General.

(Endorsement:) No. 186. October term, 1920. (C. P. No. 2. Philadelphia County, December term, 1919. No. 6179.) In the Superior Court of Pennsylvania. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corporation, appellant. Assignments of error. Henry J. Gibbons, Wm. Y. C. Anderson, assistant counsel United States Shipping Board Emergency Fleet Corporation. Charles D. McAvoy, United States attorney. A. Mitchell Palmer, Attorney General. Filed in Superior Court Aug. 25, 1920, Philadelphia.

64 In the Superior Court of Pennsylvania.
No. 133.

JOHN E. SULLIVAN
vs.
UNITED STATES SHIPPING BOARD Emergency Fleet Corporation, appellant. } No. 186. October Term, 1920.

Appeal by defendant from the judgment of the Court of Common Pleas No. 2 of Philadelphia County.
No. 133.

Opinion by KELLER, J.

The plaintiff, Sullivan, was employed by defendant, United States Shipping Board Emergency Fleet Corporation (hereinafter called

Fleet Corporation), as a truck driver. He was injured on October 10, 1918, in the city of Philadelphia, while in the course of such employment. He filed a petition for compensation under the workmen's compensation act of 1915 (act of June 2, 1915, P. L. 736), to which defendant filed an answer denying liability on the ground that claimant was a civil employee of the United States of America and compensable only under the Federal workmen's compensation act. At the hearing before the referee, defendant offered no evidence and an award was made in favor of the claimant. On appeal to workmen's compensation board a hearing de novo was ordered. At this hearing the claimant offered in evidence petition of the Fleet Corporation to the workmen's compensation board asking leave to intervene on all petitions for compensation against its "agents" in Pennsylvania, viz, The American International Shipbuilding Corporation, the Merchants Shipbuilding Corporation, and Traylor Shipbuilding
65 Corporation, etc., which apparently recited the facts relative to its incorporation (the appellant has not printed it as part of the record). The defendant again offered no evidence. The board affirmed the award of the referee. On appeal to the Common Pleas, the appeal was dismissed and the award confirmed. The present appeal by the Fleet Corporation followed.

The Fleet Corporation was incorporated April 16, 1917, under the laws of the District of Columbia by virtue of the authority contained in section 11 of the act of Congress of September 7, 1916, ch. 451 (39 U. S. Statutes at Large 728, U. S. Comp. Statutes, sec. 8146f), for the formation by the United States Shipping Board of one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.

Under said act the shipping board, which was authorized, for and on behalf of the United States, to subscribe to, purchase, and vote not less than a majority of the capital stock of such corporation, may, with the approval of the President, sell any or all of the stock of the United States in such corporation, but not so as to make it a minority stockholder. In other words the United States may be either a majority stockholder in the Fleet Corporation, or no stockholder at all; it may not be a minority stockholder. There was no proof offered in this case as to its status at the time the accident happened, and when this claim was presented; that is, whether the United States then owned any stock at all in the Fleet Corporation.

It is not necessary for us to discuss at length whether the Fleet Corporation is a branch of the Federal Government, exercising governmental functions as such, or a business corporation used by the Shipping Board as an agency in its work, and subject to the disabilities as well as desirabilities of a private corporation, for that
66 question has been fully considered and answered by our own Supreme Court in the case of Haines *v.* Lone Star Shipbuilding Co., 268 Pa. 92, which held that this very corporation defendant

was subject like any other corporation of the District of Columbia to action by garnishment in the State courts. Judge Kephart, in the course of his opinion, said of it: "To all intents and purposes, it operated and existed as any corporation operates and exists; could sue and be sued, as any corporation might sue and be sued. * * * There is not a single line before us which has a tendency to show that the board conferred on the Fleet Corporation any of its many administrative or governmental duties. * * * It was an arm of the Shipping Board, functioning as a great industrial business corporation, with power to enact by-laws, vote its stock, deposit its money and securities, and declare dividends from the surplus and profits. * * * It is a business corporation to be treated as such, unless Congress expressly provides otherwise, which has not been done in the present instance." To hold otherwise would be to hold that Congress did the wholly purposeless thing of incorporating a corporation which should not be a corporation at all, to perform under the board things, which, as a governmental agency, the board had ample authority to do. Lord & Burnham *v.* U. S. Shipping Board Emergency Fleet Corp., 265 Fed. 955.

The Fleet Corporation was, under the evidence, carrying on business in this Commonwealth. It must be assumed, for there is no evidence to the contrary, that it had full control and management of its employees; it hired and discharged whom it saw fit and paid such wages as it contracted and agreed to pay. It was self-governing.

The act of Congress of September 7, 1916, ch. 458 (39 Statutes at Large 742, U. S. Comp. Stat. secs. 8932 a-uu), referred to in defendant's answer as the Federal workmen's compensation act,
67 is entitled "An act to provide compensation for employes of the United States suffering injuries while in the performance of their duties and for other purposes." In its defining section, it provides "The term 'employe' includes all civil employes of the United States and of the Panama Railroad Company," thus apparently recognizing that the employees of a corporation all of whose stock and property is owned by the United States would not be included in the act unless specially mentioned. The employees of the Fleet Corporation are not referred to in the act.

That the Fleet Corporation is not considered a Government establishment for all intents and purposes is seen by reference to secs. 6 and 7 of the act of Congress of October 6, 1917, ch. 79 (40 Stat. at Large 383; U. S. Comp. Stat. 251 a & b), which provide that for the purposes of those sections (relative to (a) transfer of employees in executive departments to independent establishments, etc., and (b) employment of employees of executive departments and Government establishments in other departments and establishments at increased compensation), the Fleet Corporation shall be considered a Government establishment. If its employees were civil employees of the United States for all intents and purposes such a provision would not have been necessary.

That the employees of the Fleet Corporation are not for every purpose employees and agents of the United States is definitely settled by the decision of the United States Supreme Court (delivered January 3, 1921, Advance Opinions, p. 174) in the case of United States *v.* Strang et al., a writ of error from the District Court of the Southern District of Florida, in which it was held that an inspector of the Fleet Corporation was not, by reason of such employment and without more, an agent of the United States within the meaning of
68 section 41 of the Criminal Code forbidding any officer or agent of any corporation, etc., or person directly or indirectly interested in the pecuniary profits or contracts of such corporation, etc., from being employed or acting as an officer or agent of the United States for the transaction of business with such corporation. The court, speaking through Mr. Justice McReynolds, said: "The corporation was controlled and managed by its own officers and appointed its own servants and agents who became directly responsible to it. Notwithstanding all its stock was owned by the United States it must be regarded as a separate entity. Its inspectors were not appointed by the President nor by any officer designated by Congress; they were subject to removal by the corporation only and could contract only for it. In such circumstances we thing they were not agents of the United States within the true intendment of section 41."

In that case the relevant facts in the case were admitted by demurrer. Here there was no evidence offered and no admission by demurrer. The appellant contended, and argued in this court, that all it had to do was to say, "My workmen are civil employees of the United States," and the burden of proving the contrary was cast on the claimant. We do not so understand the law. The law undoubtedly is that neither the United States nor its property can be subjected to direct legal proceedings without its consent, Carr v. United States, 98 U. S. 433; and that this applies whether the action is against the United States or its officer or agent, provided the effect of the judgment or decree is against the United States. But in the cases enunciating this rule, the defendant was sued as an officer of the United States, or the pleadings or evidence showed that the suit was directed against him as such officer and not individually. Such were suits against the Secretary of the Interior: Naganob v. Hitchcock, 202 U. S. 473; Oregon v. Hitchcock, 202 U. S. 60; the Secretary of the Treasury: Louisiana v. McAoo, 234 U. S. 627; a Commodore in the United States Navy:
69 Belknap v. Schild, 161 U. S. 10; a General in the United States Army: Stanley v. Schwalby, 162 U. S. 255; a purser on a United States frigate: Buchanan v. Alexander, 4 Howard 20; a collector of customs: Fischer v. Daudistal, 9 Fed. 145; an Indian agent: Occidental Const. Co. v. United States, 245 Fed. 817; a State treasurer: Smith v. Reeves, 178 U. S. 436. Or the primary interest of the Government in the suit was admitted by demurrer: Bellaine

v. Alaska Northern Ry. Co. (United States intervener), 259 Fed. 183.

In the present case, the workmen's compensation board and the court are bound to take judicial notice of acts of Congress and Executive orders and regulations authorized by acts of Congress which have the force of statutes: Caha v. United States, 152 U. S. 211; as well as general acts of assembly affecting the defendant. Anything else must be averred and proved as by any other litigant. "While a State court can take judicial notice of an act of Congress, it can not take such notice of facts necessary to bring a particular case within its provisions:" Di Donato v. Phila. & R. Ry. Co., 266 Pa. 412. See also Re James Thomson Muir, Master of the Gleneden, Adv. ops. U. S. Supreme Ct., No. 7, p. 219, decided January 17, 1921.

On its face we have here a claim for workmen's compensation presented against a corporation of the District of Columbia, doing business in this State, engaged in performing certain important matters committed to it by the Shipping Board relative to the purchase, construction, equipment, etc., of merchant vessels in the commerce of the United States, and answer made that it is not liable because the injured man was a civil employee of the United States. No evidence was presented to support this answer. If the Fleet Corporation in some of its transactions was acting as a private business corporation, and in others as such an agency of the Government as to make its workmen civil employees of the United States, nothing was shown that the injured man was working for it at the time he was injured in its governmental capacity. Where a workman employed by a railroad engaged in both interstate and intrastate commerce, is injured in the course of his employment, it is incumbent on the company to prove that he was at the time of injury engaged in interstate business in order to escape liability for compensation: Polk *v.* Phila. & R. Ry. Co., 266 Pa. 335.

The minutes of the United States Employees' Compensation Commission referred to in the appellant's paper book were not offered in evidence and can not be here considered. They would not be binding, even if they had been offered.

As the case was presented before the referee and the board, we are satisfied that the award was fully justified, and it is accordingly confirmed and the appeal dismissed at the costs of the appellant.

(Endorsement:) Journal, page No. 133. No. 186, October Term, Term 1920. In the Superior Court of Pennsylvania. John E. Sullivan *v.* United States Shipping Board Emergency Fleet Corporation, appellant. Appeal from Common Pleas No. 2 of Philadelphia County. Judgment affirmed, Keller, J. Filed in Superior Court Mar. 5, 1921, Philadelphia.

71 In the Supreme Court of Pennsylvania for the eastern district.

JOHN E. SULLIVAN,
vs.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, appellant.

Petition for the allowance of an appeal from the superior court.

To the Chief Justice and Associates Justices of the Supreme Court the Petition of Charles D. McAvoy respectfully represents:

1. That he is the United States attorney for the Eastern District of Pennsylvania and that by virtue of the acts of Congress regulating the Department of Justice of the United States and of Executive orders of the President of the United States, he is attorney of record for the appellant in the above-entitled case, together with the Attorney General of the United States.

2. That the questions involved in the above-entitled case are as follows:

(*a*) Whether a direct employee of the United States Shipping Board Emergency Fleet Corporation is a civil employee of the United States within the meaning of the Federal compensation act of Congress approved September 7th, 1916.

(*b*) Whether the United States Employees' Compensation Commission has exclusive jurisdiction over compensation claims of employees of the United States Shipping Board Emergency Fleet Corporation arising from accidents occurring in the State of Pennsylvania.

(*c*) Whether a direct employee of the United States Shipping Board Emergency Fleet Corporation, injured in the course of his employment, may claim compensation either through the Workmen's Compensation Board of Pennsylvania or the United States Employees' Compensation Commission.

72 3. That on March 5, 1921, the Superior Court, as of October term, 1920, No. 186, handed down its opinion in the above-entitled case affirming the award of the Court of Common Pleas No. 2 for the county of Philadelphia and dismissing the appeal of the appellant; a copy of said opinion is hereto attached.

4. An appeal from said decision of the Superior Court is asked and should be granted on the following grounds:

(a) This case involves the construction and application of statutes of the United States and Executive orders of the President.

(b) That the only money out of which the award aforesaid may be satisfied is the money of the United States appropriated by Congress either to meet the requirements of the act of Congress of September 7th, 1916, ch. 458 (39 Stats., 742), known as the Federal employees' compensation act, or for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States; the said appropriation, being for national purposes, may not be diverted by State process or otherwise.

(c) That in its opinion in this case the Superior Court has misconstructed the decision of your honorable court in the case of Haines vs. Lone Star Shipbuilding Company, 269 Pennsylvania, 92, and has likewise misconstructed the decision of the Supreme Court of the United States in the case of United States vs. Strang, 41 Supreme Court Reporter, 165.

(d) That the decision of the Superior Court in this case is at variance with every Federal decision as to the status of the United States Shipping Board Emergency Fleet Corporation made since the decision of your honorable court in the case of Haines vs. Lone Star Shipbuilding Company, supra, which Federal decisions are four in number, all holding that suits against the United States Shipping Board Emergency Fleet Corporation are in substance and effect suits against the United States, which can only be brought in the manner and in the courts designated in the Federal Judicial Code for suits against the United States.

(e) The Superior Court, while correctly stating in its opinion in this case that the employees of the Fleet Corporation are
73 not referred to in the Federal employees' compensation act of September 7th, 1916, has also correctly stated that the United States Shipping Board Emergency Fleet Corporation was not incorporated until April 16th, 1917; and it was, therefore, manifestly impossible for the former act to mention the employees of said United States Shipping Board Emergency Fleet Corporation.

(f) The Superior Court in its opinion in this case has erroneously stated that the appellant contended and argued that all it had to do was to say "My workmen are civil employees of the United States," whereas the true contention of the appellant was and is that it is the United States, acting through its duly constituted law officers, which asserts that the employees of the appellant are its civil employees.

And your petitioner will ever pray.

CHARLES D. MCAVOY,
United States Attorney.

COUNTY OF PHILADELPHIA, *ss:*

Charles D. McAvoy, being duly sworn according to law, deposes and says that he is the United States attorney for the eastern district of Pennsylvania; that by virtue of said office he is counsel of record for the appellant in the above-entitled case; that he verily believe injustice has been done the appellant and the United States by the decision of the Superior Court above referred to, and that he believes the grounds upon which an appeal from said decision is sought are well founded in point of law.

CHARLES D. MCAVOY,
United States Attorney.

Sworn and subscribed before me this 10th day of March, 1921.

[SEAL.] THEODORE L. CABAUGH,
Deputy Clerk District Court United States.

74 In the Superior Court of Pennsylvania.

No. 133.

JOHN E. SULLIVAN
v.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, appellant.

No. 186. October term, 1920.

Appeal by defendant from the judgment of the Court of Common Pleas No. 2 of Philadelphia County.

No. 133.

Opinion by KELLER, J.

The plaintiff, Sullivan, was employed by defendant, United States Shipping Board Emergency Fleet Corporation (hereinafter called Fleet Corporation) as a truck driver. He was injured on October 10, 1918, in the city of Philadelphia while in the course of such employment. He filed a petition for compensation under the workmen's compensation act of 1915 (act of June 2, 1915, P. L., 736), to which defendant filed an answer denying liability on the ground that claimant was a civil employee of the United States of America and compensable only under the Federal workmen's compensation act. At the hearing before the referee defendant offered no evidence, and an award was made in favor of the claimant. On appeal to workmen's compensation board a hearing de novo was ordered. At this hearing the claimant offered in evidence petition of the Fleet Corporation to the workmen's compensation board asking leave to intervene on all petitions for compensation against its "agents" in Pennsylvania, viz, The American International Shipbuilding Corporation, the Merchants Shipbuilding Corporation, and Tray-
75 lor Shipbuilding Corporation, etc., which apparently recited the facts relative to its incorporation (the appellant has not printed it as part of the record). The defendant again offered no evidence. The board affirmed the award of the referee. On appeal to the Common Pleas, the appeal was dismissed and the award confirmed. The present appeal by the Fleet Corporation followed.

The Fleet Corporation was incorporated April 16, 1917, under the laws of the District of Columbia by virtue of the authority contained in section 11 of the act of Congress of September 7, 1916, ch. 451 (39 U. S. Statutes at Large 728, U. S. Comp. Statutes, sec. 8146f), for the formation by the United States Shipping Board of one or more corporations for the purchase, construction, equipment, lease, charter, maintenance, and operation of merchant vessels in the commerce of the United States.

Under said act the Shipping Board, which was authorized, for and on behalf of the United States, to subscribe to, purchase, and vote not less than a majority of the capital stock of such corpora-

tion, may, with the approval of the President, sell any or all of the stock of the United States in such corporation, but not so as to make it a minority stockholder. In other words, the United States may be either a majority stockholder in the Fleet Corporation, or no stockholder at all; it may not be a minority stockholder. There was no proof offered in this case as to its status at the time the accident happened, and when this claim was presented—that is, whether the United States then owned any stock at all in the Fleet Corporation.

It is not necessary for us to discuss at length whether the Fleet Corporation is a branch of the Federal Government, exercising governmental functions as such, or a business corporation used by the Shipping Board as an agency in its work and subject to the disabilities as well as desirabilities of a private corporation, for
76 that question has been fully considered and answered by our own Supreme Court in the case of Haines v. Lone Star Shipbuilding Co., 268 Pa., 92, which held that this very corporation defendant was subject like any other corporation of the District of Columbia to action by garnishment in the State courts. Judge Kephart, in the course of his opinion, said of it: "To all intents and purposes it operated and existed as any corporation operates and exists, could sue and be sued, as any corporation might sue and be sued. * * * There is not a single line before us which has a tendency to show that the board conferred on the Fleet Corporation any of its many administrative or governmental duties. * * * It was an arm of the Shipping Board, functioning as a great industrial business corporation, with power to enact by-laws, vote its stock, deposit its money and securities, and declare dividends from the surplus and profits. * * * It is a business corporation to be treated as such, unless Congress expressly provides otherwise, which has not been done in the present instance." To hold otherwise would be to hold that Congress did the wholly purposeless thing of incorporating a corporation, which should not be a corporation at all, to perform under the board things which, as a governmental agency, the board had ample authority to do: Lord & Burnham v. U. S. Shipping Board Emergency Fleet Corp., 265 Fed., 955.

The Fleet Corporation was, under the evidence, carrying on business in this Commonwealth It must be assumed, for there is no evidence to the contrary, that it had full control and management of its employees; it hired and discharged whom it saw fit and paid such wages as it contracted and agreed to pay. It was self-governing.

The act of Congress of September 7, 1916, ch. 458 (39 Statutes at Large, 742; U. S. Comp. Stat., secs. 8932 a-uu), referred to in defendant's answer as the Federal workmen's compensation act,
77 is entitled "An act to provide compensation for employees of of the United States suffering injuries while in performance

of their duties, and for other purposes." In its defining section it provides "The term 'employee' includes all civil employees of the United States and of the Panama Railroad Company," thus apparently recognizing that the employees of a corporation all of whose stock and property is owned by the United States would not be included in the act unless specially mentioned. The employees of the Fleet Corporation are not referred to in the act.

That the Fleet Corporation is not considered a Government establishment for all intents and purposes is seen by reference to secs. 6 and 7 of the act of Congress of October 6, 1917, ch. 79 (40 Stat. at Large, 383; U. S. Comp. Stat. 251 a & b), which provide that for the purposes of those sections (relative to (a) transfer of employees in executive departments to independent establishments, etc., and (b) employment of employees of executive departments and Government establishments in other departments and establishments at increased compensation), the Fleet Corporation shall be considered a Government establishment. If its employees were civil employees of the United States for all intents and purposes such a provision would not have been necessary.

That the employees of the Fleet Corporation are not for every purpose employees and agents of the United States is definitely settled by the decision of the United States Supreme Court (delivered January 3, 1921, Advance Opinions, p. 174) in the case of United States v. Strang et al., a writ of error from the District Court of the Southern District of Florida, in which it was held that an inspector of the Fleet Corporation was not, by reason of such employment and without more, an agent of the United States within
the meaning of section 41 of the Criminal Code for-
78 bidding any officer or agent of any corporation, etc., or
person directly or indirectly interested in the pecuniary profits or contracts of such corporations, etc., from being employed or acting as an officer or agent of the United States for the transaction of business with such corporation. The court, speaking through Mr. Justice McReynolds, said: "The corporation was controlled and managed by its own officers and appointed its own servants and agents who became directly responsible to it. Notwithstanding all its stock was owned by the United States it must be regarded as a separate entity. Its inspectors were not appointed by the President nor by any officer designated by Congress; they were subject to removal by the corporation only and could contract only for it. In such circumstances we think they were not agents of the United States within the true intendment of section 41."

In that case the relevant facts in the case were admitted by demurrer. Here there was no evidence offered and no admission by demurrer. The appellant contended, and argued in this court, that all it had to do was to say "My workmen are civil employees of the United States," and the burden of proving the contrary was cast on the claimant. We do not so understand the law. The law undoubtedly is that neither the United States nor its property can be sub-

jected to direct legal proceedings without its consent: Carr v. United States, 98 U. S. 433; and that this applies whether the action is against the United States or its officer or agent provided the effect of the judgment or decree is against the United States. But in the cases enunciating this rule the defendant was sued as an officer of the United States, or the pleadings or evidence showed that the suit was directed against him as such officer, and not individually. Such were suits against the Secretary of the Interior: Naganob v. Hitchcock, 202 U. S. 473; Oregon v. Hitchcock, 202 U. S. 60;
the Secretary of the Treasury: Louisiana v. McAdoo, 234
79 U. S. 627; a commodore in the United States Navy: Belknap v. Schild, 161 U. S. 10; a general in the United States Army: Stanley v. Schwalby, 162 U. S. 255; a purser on a United States frigate: Buchanan v. Alexander, 4 Howard 20; a collector of customs: Fischer v. Daudistal, 9 Fed. 145; an Indian agent: Occidental Const. Co. v. United States, 245 Fed. 817; a State treasurer: Smith v. Reeves, 178 U. S. 436. Or the primary interest of the Government in the suit was admitted by demurrer: Bellaine v. Alaska Northern Ry. Co. (United States intervener) 259 Fed. 183.

In the present case, the workmen's compensation board and the court are bound to take judicial notice of acts of Congress and Executive orders and regulations authorized by acts of Congress which have the force of statutes: Caha v. United States, 152 U. S. 211; as well as general acts of assembly affecting the defendant. Anything else must be averred and proved as by any other litigant. "While a State court can take judicial notice of an act of Congress, it can not take such notice of facts necessary to bring a particular case within its provisions:" Di Donato v. Phila. & R. Ry. Co., 266 Pa. 412. See also Re James Thomson Muir, Master of the Glenedin, Adv. ops. U. S. Supreme Ct., No. 7, p. 219, decided January 17, 1921.

On its face we have here a claim for workmen's compensation presented against a corporation of the District of Columbia, doing business in this State, engaged in performing certain important matters committed to it by the Shipping Board relative to the purchase, construction, equipment, etc., of merchant vessels in the commerce of the United States, and answer made that it is not liable because the injured man was a civil employee of the United States. No evidence was presented to support this answer. If the Fleet Corporation in some of its transactions was acting as a private business corporation and, in others, as such an agency of the Government as to make its workmen civil employees of the United States, nothing was shown that the injured man was working for it at the time
he was injured in its governmental capacity. Where a
80 workman employed by a railroad engaged in both interstate and intrastate commerce, is injured in the course of his employment, it is incumbent on the company to prove that he was at the time of injury engaged in inter-state business in order to

escape liability for compensation: Polk v. Phila. & R. R. Co., 266 Pa. 335.

The minutes of the United States Employees' Compensation Commission referred to in the appellant's paper book were not offered in evidence and can not be here considered. They would not be binding, even if they had been offered.

As the case was presented before the referee and the board, we are satisfied that the award was fully justified, and it is accordingly confirmed and the appeal dismissed at the costs of the appellant.

81 (Endorsement:) Page 345. No. 186, Oct. term, 1920. John E. Sullivan vs. United States Shipping Board Emergency Fleet Corporation, appellant. Petition for the allowance of an appeal from the Superior Court. March 15, 1921, refused. Per curiam. Filed in Supreme Court Mar. 11, 1921, Philadelphia. Charles D. McAvoy, United States attorney for appellant.

82 SULLIVAN *v.* UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

STATE OF PENNSYLVANIA,
Philadelphia County, ss:

I, Rudolph M. Schick, prothonotary pro tem. of the Superior Court of Pennsylvania, do hereby certify that the above and foregoing is a true copy of the entire record in the above-entitled cause, so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Philadelphia, this 29th day of March, A. D. 1921.

[SEAL.] RUDOLPH M. SCHICK,
Prothonotary pro tem.

83 I, George B. Orlady, president judge of the Superior Court of Pennsylvania, do hereby certify that Rudolph M. Schick was, at the time of signing the annexed attestation, and now is, prothonotary pro tem. of the said Superior Court of Pennsylvania, sitting at Philadelphia, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 29th day of March, one thousand nine hundred and twenty-one.

GEO. B. ORLADY,
President Judge.

I, Rudolph M. Schick, prothonotary pro tem. of the Superior Court of Pennsylvania, sitting at Philadelphia, do certify that the Honorable George B. Orlady, by whom the foregoing certificate was made and given, was, at the time of making and giving the same, and is now, president judge of the Superior Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Superior Court of Pennsylvania, sitting at Philadelphia, this twenty-ninth day of March, one thousand nine hundred and twenty-one.

[SEAL.]

RUDOLPH M. SCHICK,
Prothonotary pro tem.

1x Court of Common Pleas No. 2, Philadelphia.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I, William J. MacCain, clerk of the court above named, hereby certify that the only proceedings had in said court in the case of John E. Sullivan *vs.* United States Shipping Board Emergency Fleet Corporation were those shown by the copy of the docket entries therein appearing on page one of the exemplification of the record in the said cause, so full and entire as appear of record in the Superior Court of Pennsylvania; and that the only opinion filed in the Court of Common Pleas No. 2 was that which had, in February 5, 1920, been rendered by the Workmen's Compensation Board of Pennsylvania, which opinion said court adopted as its own, when, on May 12, 1920, it dismissed the defendant's appeal from the award of the workmen's compensation board in favor of the plaintiff and confirmed said award; and that copies of the opinion so adopted and filed by said Court of Common Pleas appear in the above-mentioned exemplification on pages 38 et seq. and 54 et. seq. thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Philadelphia this 9th day of June, 1921.

[SEAL.]

WM. J. MACCAIN,
Clerk of Common Pleas No. 2 of Phila. County.

CERTIFICATE OF OFFICIAL CAPACITY.

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

I, Norris S. Barratt, president judge of the Court of Common Pleas No. 2, of the county of Philadelphia, in the Commonwealth of Pennsylvania, being the first judicial district of Pennsylvania, do certify that William J. MacCain, by whom the annexed record, certificate, and attestation were made and given and who in his own proper handwriting has thereunto subscribed his name and affixed his official seal, was at the time of so doing and now is clerk of Court of Common Pleas No. 2, in and for the city and county of Philadelphia, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that the said record, certificate, and attestation are in due form and made by the proper officer.

In testimony whereof I have hereunto set my hand this 9th day of June, in the year of our Lord one thousand nine hundred and twenty-one (1921).

NORRIS S. BARRATT, *P. J.*

COMMONWEALTH OF PENNSYLVANIA,
County of Philadelphia, ss:

I, William M. Bunn, prothonotary of the Courts of Common Pleas of the county of Philadelphia aforesaid, do certify that the Honorable Norris S. Barratt, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof and still is president judge of the Court of Common Pleas No. 2, of the county of Philadelphia aforesaid, being the first judicial district of Pennsylvania, duly commissioned and sworn; to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere.

In testimony whereof I have hereunto set my hand and affixed the seal of said courts this 9th day of June, in the year of our Lord one thousand nine hundred and twenty-one (1921).

[SEAL.]

WILLIAM M. BUNN,
Prothonotary.
By MEREDITH HANNA,
Deputy Prothonotary.

○

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the Superior Court of the State of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Superior Court of Pennsylvania before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the United States Shipping Board Emergency Fleet Corporation, plaintiff in error, and John E. Sullivan, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under,
said State, on the ground of their being repugnant to the Con-
54 stitution, treaties, or laws of the United States, and the decision was in favor of their validity; a manifest error hath happened to the great damage of the said plaintiff in error as by said complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the thirteenth day of June, in the year of our Lord one thousand nine hundred and twenty-one.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

Filed in Superior Court, Jun. 16, 1921, Philadelphia.

55 UNITED STATES OF AMERICA, *ss:*

To John E. Sullivan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the

clerk's office of the Superior Court of the United States, wherein the United States Shipping Board Emergency Fleet Corporation is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, Associate Justice of the Supreme Court of the United States, this thirteenth day of June, in the year of our Lord one thousand nine hundred and twenty-one.

MAHLON PITNEY,
Associate Justice of the Supreme Court of the United States.

Service of a copy of the within citation is hereby admitted this 30th day of June, 1921.

SAMUEL SCOVILLE, JR.,
Attorney for John E. Sullivan.

Filed in Supreme Court June 30, 1921. Philadelphia.

56 SULLIVAN v. UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

STATE OF PENNSYLVANIA,
Philadelphia County, ss:

I, Rudolph M. Schick, prothonotary pro tem. of the Superior Court of Pennsylvania, do hereby certify that the above and foregoing is a true copy of the record in the above entitled cause, so full and entire as appears of record in said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Philadelphia this 22d day of June, A. D., 1921.

[SEAL.] RUDOLPH M. SCHICK,
Prothonotary pro tem.

57 I, George B. Orlady, president judge of the Superior Court of Pennsylvania, do hereby certify that Rudolph M. Schick was, at the time of signing the annexed attestation, and now is, prothonotary pro tem. of the said Superior Court of Pennsylvania, sitting at Philadelphia, to whose acts, as such, full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this 22d day of June, one thousand nine hundred and twenty-one.

GEO. B. ORLADY,
President Judge of the Superior Court of Pennsylvania.

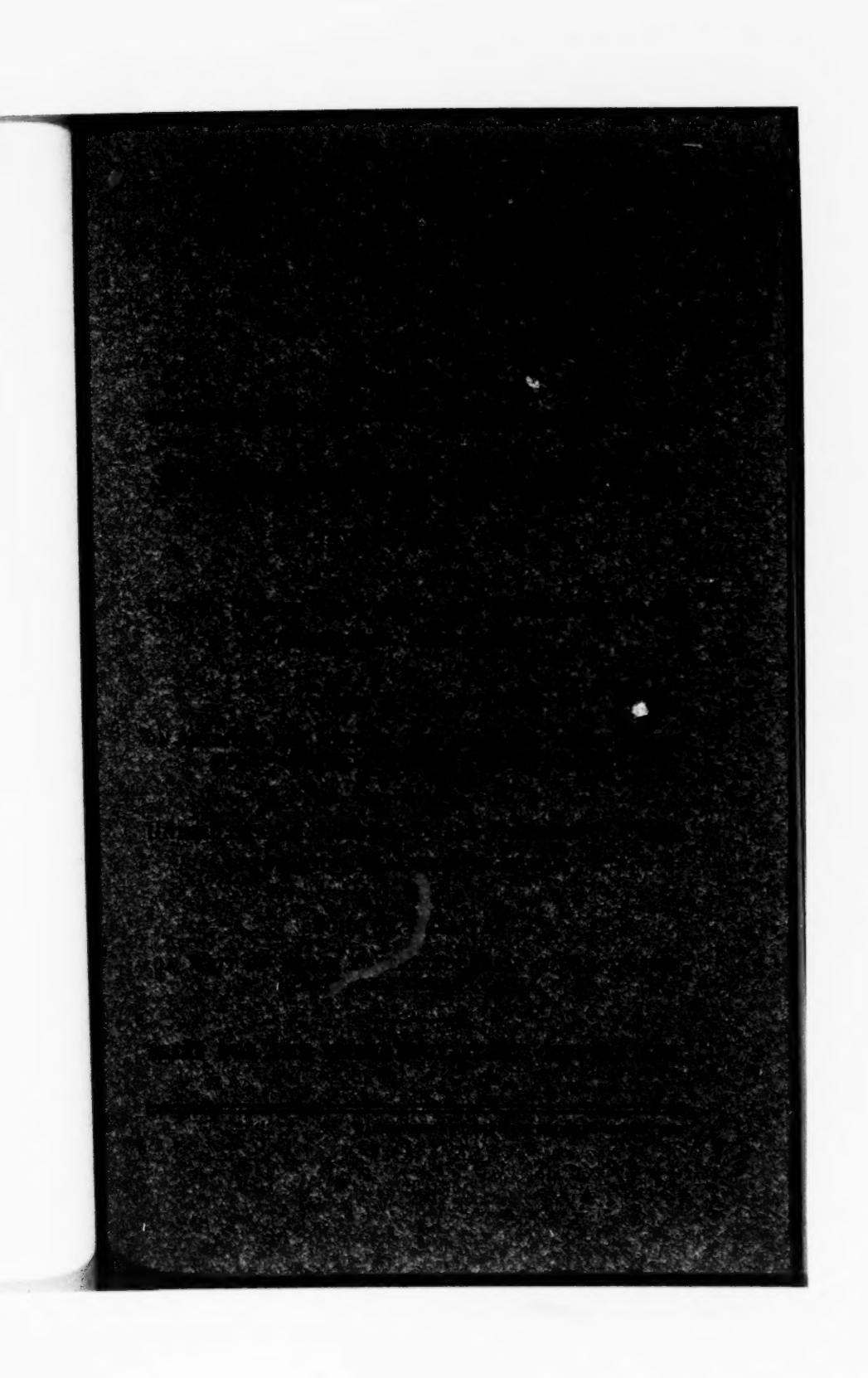
I, Rudolph M. Schick, prothonotary pro tem. of the Superior Court of Pennsylvania, sitting at Philadelphia, do certify that the Honorable George B. Orlady, by whom the foregoing certificate was made and given, was, at the time of making and giving the same,

and is now, president judge of the Superior Court of Pennsylvania; to whose acts, as such, full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Superior Court of Pennsylvania, sitting at Philadelphia, this 22d day of June, one thousand nine hundred and twenty-one.

[SEAL.]

RUDOLPH M. SCHICK,
Prothonotary pro tem.



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In the Supreme Court of the United States.

OCTOBER TERM, 1922.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, petitioner,
v.
JOHN E. SULLIVAN. } No. 93.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, plaintiff in error,
v.
JOHN E. SULLIVAN. } No. 124.

ON WRIT OF ERROR TO THE SUPERIOR COURT OF THE STATE OF PENNSYLVANIA.

BRIEF FOR THE EMERGENCY FLEET CORPORATION.

STATEMENT.

The above-entitled petition for a writ of certiorari (No. 93) and writ of error (No. 124) seek the reversal of a judgment of the Superior Court of the State of Pennsylvania which affirmed a judgment of the Court

of Common Pleas of Philadelphia County upholding an order of the Pennsylvania Workmen's Compensation Board awarding to John E. Sullivan, respondent and defendant in error, compensation for injuries sustained by him while employed by the United States Shipping Board Emergency Fleet Corporation.

The precise question presented is, whether the United States Shipping Board Emergency Fleet Corporation, an agency of the Federal Government for the exercise of war-time emergency powers conferred by Congress on the President and by the President delegated to it, is subject to the jurisdiction of the Pennsylvania Workmen's Compensation Board. Necessarily involved in the consideration and determination of the case, however, is the broader question of the extent to which, if at all, the Emergency Fleet Corporation is subject to the general police and taxing powers of the States.

The Emergency Fleet Corporation in the discharge of its official duties has done and is doing business in many of the States of the Union. Whether it is subject to the regulatory and taxing powers of those States is a question of great importance to the Government. A few attempts have been made to compel the Emergency Fleet Corporation to comply with State laws governing foreign corporations; in several instances State and county officials have sought to levy taxes on its property, and to regulate its operations.

THE FACTS.

On January 13, 1919, John E. Sullivan filed with the Pennsylvania Workmen's Compensation Board a claim against the Emergency Fleet Corporation for $100. (Rec. No. 93, p. 5.) In his petition he alleged that, on October 10, 1918, *while employed by the Emergency Fleet Corporation as a driver of an auto truck*, he collided with another truck in the city of Philadelphia and suffered injuries, as a result of which he was incapacitated for some months.

The petition having been referred to a referee (Rec. 6–7) the Emergency Fleet Corporation filed an answer denying liability on the ground that Sullivan was in effect a civil employee of the United States and as such entitled to be compensated for his injury by the United States Employees' Compensation Commission (Rec. 8).

The referee, denying the special defense thus set up, awarded compensation. (Rec. 10–12.) The Emergency Fleet Corporation noted an appeal to the full board (Rec. 12–13) where a hearing was had *de novo* (Rec. 16–18). At that hearing counsel for the Emergency Fleet Corporation contended that as the Fleet Corporation was an agency of the Federal Government, and the United States Employees' Compensation Commission had taken jurisdiction over its employees, the State board was without power to make an award against it. (Rec. 20–23.)

The State board refused to take cognizance of the public status of the Emergency Fleet Corporation as

disclosed by the statutes of the United States and filed an opinion affirming the findings and conclusions of the referee. (Rec. 23–25.) As this opinion was virtually adopted by both the Court of Common Pleas and the Superior Court we may note that it was rested (*a*) upon an alleged admission of the Fleet Corporation which will be hereafter considered; (*b*) upon a decision of the District Court for Eastern Pennsylvania in a case involving the suability of the Fleet Corporation;[1] and (*c*) upon the narrow view that as the Fleet Corporation is a corporation doing business in the State it is neither the "duty nor privilege" of the board "to make a collateral investigation as to the ownership of the defendant's capital stock."

The Fleet Corporation appealed to the Court of Common Pleas of Philadelphia County (Rec. 26–35), where the order of the board was sustained (Rec. 36, 51). It then appealed to the Superior Court of the State of Pennsylvania (Rec. 35–39), likewise without success (Rec. 39–43). Finally, the Fleet Corporation, by the United States attorney for the Eastern District of Pennsylvania, petitioned the Supreme Court of Pennsylvania for the allowance of an appeal (Rec. 44–45), but its petition was denied *per curiam* (Rec. 50).

Notwithstanding the narrow grounds of decision stated in the opinions of the Workmen's Compensation Board and the Superior Court, the contention that the Emergency Fleet Corporation is an agency

[1] *Commonwealth Finance Corporation* v. *Landis*, 261 Fed. 440.

of the Federal Government, and as such is not subject to the regulatory powers of the States, based on the public statutes of the United States and the Executive orders of the President, was duly made at each step in the proceedings and was in each instance reserved and presented by appropriate assignments of error. (Rec. 3, 8, 26–27, 31–32, 38–39, 44–45.)

JURISDICTION OF THIS COURT.

Because of the importance to the Government of the questions involved, and because some uncertainty existed as to the proper procedure under section 237 of the Judicial Code as amended by the act of September 6, 1916 (c. 448, 39 Stat. 726)[1] the jurisdiction of this court was invoked both by a petition for a writ of certiorari and by a writ of error. The writ of error was duly allowed by Mr. Justice Pitney (Rec. 53); the petition for a writ of certiorari was submitted to the court, but action thereon apparently has been withheld pending a hearing on the writ of error.

[1] SEC. 237. A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity, may be reexamined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the same to the court from which it was removed by the writ.

It shall be competent for the Supreme Court, by certiorari or otherwise, to require that there be certified to it for review and determination with the

As stated in *Dahnke-Walker Company* v. *Bondurant* (257 U. S. 282, 288), there is some overlapping of the jurisdiction of this court under the two writs and there are some cases in which jurisdiction may be sustained under either or both. The present case appears to be in that class. Jurisdiction may be sustained under the writ of error on the ground that it involves the validity under the Constitution of the United States of a statute of, or an authority exercised under, a State, and the decision was in favor of their validity. *Dahnke-Walker Co.* v. *Bondurant*, *supra*. Jurisdiction may even more clearly be sustained by certiorari on the ground that the case is one where a "right, privilege, or immunity is claimed under the Constitution, or * * * statute of * * * or authority exercised under the Constitution of the United States, and the decision is * * * against the * * * right, privilege, or immunity especially set up or claimed."

If the court shall determine that jurisdiction should be had by writ of certiorari rather than by writ of error, it is submitted that the case is of sufficient public importance to justify the granting of such writ.

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same power and authority and with like effect as if brought up by writ of error any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is either in favor of or against the title, right, privilege, or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission, or authority.

ASSIGNMENTS OF ERROR.

The Superior Court of the State of Pennsylvania erred:

1. In holding that the workmen's compensation act of Pennsylvania applied to the United States Shipping Board Emergency Fleet Corporation.

2. In not holding that the Emergency Fleet Corporation was a corporate agency of the United States Government and therefore not subject to the provisions of said act.

3. In not holding that said act as applied to the Emergency Fleet Corporation was invalid as an unconstitutional interference with the operations of the Federal Government.

4. In not holding that the defendant in error and respondent, Sullivan, was a civil employee of the United States within the meaning of the Federal employees' compensation act and that the jurisdiction of the Federal Employees' Compensation Commission thereunder was exclusive.

5. In upholding and confirming the award of the Workmen's Compensation Board of the State of Pennsylvania.

THE PENNSYLVANIA STATUTE.

The Workmen's Compensation Act of Pennsylvania (act of June 2, 1915, P. L. 736) [1] imposes on all employers in the State an absolute liability to compensate for all injuries sustained by their employees in course of their employment, regardless of negli-

[1] This was the act in effect at the time of the accident; it has been since amended but the later acts need not be noticed.

gence; and requires all such employers either to subscribe to the State insurance fund or to carry adequate insurance to insure payment of such compensation. Awards for compensation when filed with the prothonotary of the State courts have the force and effect of judgments and are a lien on an employer's property. The material provisions are as follows:

ARTICLE I.

That this act shall be called and cited as the Workmen's Compensation Act of 1915, and shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed, or extended, and shall not apply to any accident occurring outside of the Commonwealth. * * *

SECTION 103. The term "employer" as used in this act is declared to be synonymous with master, and to include natural persons, partnerships, joint-stock companies, corporations for profit, corporations not for profit, municipal corporations, the Commonwealth, and all governmental agencies created by it.

SECTION 104. The term "employee" as used in this act is declared to be synonymous with servant, and includes all natural persons who perform services for another for a valuable consideration, exclusive of persons whose employment is casual in character and not in the regular course of the business of the employer, and exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented,

finished, or repaired, or adapted for sale, in the worker's own home, or on other premises not under the control or management of the employer.

* * * * *

SECTION 106. The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

* * * * *

ARTICLE III.

* * * * *

SEC. 302. (a) In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such service, be filed with the bureau within ten days after such service and before any accident has occurred. Every

contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before December thirty-first, one thousand nine hundred and fifteen, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the bureau a true copy of such notice, together with proof of service, within the time and in the manner hereinabove prescribed: *Provided, however*, That the provisions of this section shall not be so construed as to impair the obligation of any contract now in force.

* * * * *

SEC. 303. Such agreement shall constitute an acceptance of all the provisions of article three of this act, and shall operate as a surrender by the parties thereto of their rights to any form or amount of compensation or damages for any injury or death occurring in the course of the employment, or to any method of determination thereof, other than as provided in article three of this act. Such agreement shall bind the employer and his personal representatives, and the employe, his or her wife or husband, widow or widower, next of kin, and other dependents.

* * * * *

SEC. 305. Every employer liable under this act to pay compensation shall insure the payment of compensation in the State workmen's

insurance fund, or in any insurance company, or mutual association or company, authorized to insure such liability in this Commonwealth, unless such employer shall be exempted by the bureau from such insurance. An employer desiring to be exempt from insuring the whole or any part of his liability for compensation shall make application to the bureau, showing his financial ability to pay such compensation, whereupon the bureau, if satisfied of the applicant's financial ability, shall by written order make such exemption. * * *

If an employer shall fail to comply with the provisions of this section the bureau shall, by registered mail, or in such other manner as the rules and regulations of the bureau shall provide, serve upon such employer a notice to forthwith comply with such provisions; and if such employer does not, within thirty days thereafter, insure his liability as aforesaid, or satisfy the bureau of his financial ability to pay compensation as aforesaid, or does not terminate his acceptance of article three of this act in the manner provided in section three hundred and four of the said article, such employer shall be liable for compensation under article three of this act to any employee injured thereafter, or to his personal representative, or for damages under article two of this act, at the option of such employee or his personal representatives. * * *

Then follows a schedule of compensation established for the different classes of injuries. Section 318 provides that the right of compensation granted by

the act shall have the same preference (without limit of amount) against the assets of an employer as is allowed by law for a claim for unpaid wages for labor. And by section 429 it is provided that any award for compensation when filed with the prothonotary shall be entered as a judgment and shall be a lien against the employer's property.

ARGUMENT.

I.

The Emergency Fleet Corporation at the time the accident occurred was a corporate agency of the United States exclusively engaged in purely governmental operations.

The injury to Sullivan occurred in October, 1918, when the World War was still in progress and the Emergency Fleet Corporation was exclusively engaged in the exercise of emergency war-time powers conferred by Congress on the President and by the President delegated to it.

The status of the Emergency Fleet Corporation as an agency or instrumentality of the Federal Government is established by the public laws of the United States and the Executive orders of the President having the effect of laws, of which all courts or other tribunals must take cognizance.

These statutes and orders have been so often before the court in recent years, and have been so carefully considered in its opinions,[1] that only a brief

[1] *The Lake Monroe*, 250 U. S. 246; *United States* v. *Strang*, 254 U. S. 491; *Sloan Shipyards Corp.* v. *Emergency Fleet Corp.*, decided May 1, 1922; *Astoria Marine Iron Works* v. *Emergency Fleet Corp.*, decided May 1, 1922; *Emergency Fleet Corp.* v. *Wood, Trustee*, decided May 1, 1922.

review is required. They have nowhere been more clearly or concisely summarized than in the opinion of Mr. Justice Pitney in *The Lake Monroe* (250 U. S. 246).

That case involved primarily the question whether the *Lake Monroe*, which had been requisitioned by the Fleet Corporation under the emergency shipping provision of June 15, 1917 (40 Stat., c. 29, p. 182), but which had been chartered to a private concern for use as a merchant vessel, was subject to a provision of the shipping act of 1916 (39 Stat., c. 451, p. 728), directing that all vessels purchased, chartered, or leased from the Shipping Board—

> while employed as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels.

This court held that the *Lake Monroe* was subject to the foregoing provision and hence was liable to seizure in satisfaction of a claim for damages growing out of a collision. Reviewing the several acts and executive orders relating to the Shipping Board and Fleet Corporation, and stating the military and war emergency, which then existed, the court stated the history of the Fleet Corporation as follows (pp. 249–254):

> In this state of affairs, Congress embodied in the urgent deficiencies appropriation act of June 15, 1917, c. 29, 40 Stat. 182, a clause entitled "Emergency shipping fund," which conferred upon the President broad powers

of control over contracts for the building, production, or purchase of ships or material, and among others the power "to purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of of such ship." Another clause declared: "The President may exercise the power and authority hereby vested in him * * * through such agency or agencies as he shall determine from time to time: *Provided*, That all money turned over to the United States Shipping Board Emergency Fleet Corporation may be expended as other moneys of said corporation are now expended. All ships constructed, purchased, or requisitioned under authority herein, or heretofore or hereafter acquired by the United States, shall be managed, operated, and disposed of as the President may direct."

Under this authority the President made an Executive order July 11, 1917, directing that the Fleet Corporation should have and exercise all power and authority vested in him by said provisions, so far as applicable to the construction of vessels, the purchase or requisitioning of vessels in process of construction, and the completion thereof, and that the Shipping Board should exercise all power and authority vested in him by said provision, so far as applicable to the taking over of title or possession, by purchase or requisition, of constructed vessels or charters therein, and the operation,

management, and disposition of such vessels, and of all others theretofore or thereafter acquired by the United States, declaring: "The powers herein delegated to the United States Shipping Board may, in the discretion of said board, be exercised directly by the said board or by it through the United States Shipping Board Emergency Fleet Corporation, or through any other corporation organized by it for such purpose."

* * * * *

But at the time of the emergency provision of June 15, 1917, the Shipping Board had been established as a public commission, with broad administrative powers and subject to definite restrictions, and the Fleet Corporation had been created as its agency, financed with public funds. *The emergency shipping legislation evidently was enacted in the expectation that the President would employ the Shipping Board and the Fleet Corporation as his agencies to exercise the new powers, for the Fleet Corporation was mentioned in the act, and it was known to be but an arm of the board.* It is not necessary to hold that Congress, while entertaining this expectation, went to the extent of restricting the President to those agencies; but it is not to be believed that they intended he should exercise the powers arbitrarily. And when in fact he designated the Fleet Corporation to exercise those powers so far as they pertained to the construction of vessels and the requisitioning of vessels in process of construction, and the Shipping

> Board so far as they applied to the operation, management, and disposition of vessels, it is to be presumed that he did so because of the general powers that already had been conferred upon them by law, and because they were subject to the regulatory provisions that Congress had enacted. (Italics ours.)

In addition, other statutes and orders in effect at the time of the injury to Sullivan further demonstrate that the Emergency Fleet Corporation was acting as an agency of the Federal Government and evidence the public character of its operations. Thus, by joint resolution (c. 13, 40 Stat. 75) and Executive orders thereunder (Nos. 2651, 2653), about 90 German ships were seized in American ports, turned over to the Shipping Board for equipment and operation, and it, in turn, acting under Executive order No. 2664, dated July 11, 1917, delegated the President's power of operation of such ships to the Emergency Fleet Corporation (1st An. Rep., p. 11).

By the housing act of March 1, 1918 (c. 19, 40 Stat. 438), the Fleet Corporation was directly authorized to purchase, requisition, or condemn (*a*) any houses for shipyard employees and (*b*) any land suitable for the erection of such houses thereon, and to erect such houses, $50,000,000 was appropriated therefor and the Fleet Corporation was to report directly to Congress.

By the shipyard transportation facilities act of April 22, 1918, (c. 62, 40 Stat. 535), the President was authorized to seize, extend, and operate any street

railways and the equipment thereof; and by Executive order (No. 2888) dated June 18, 1918, the President delegated to the Fleet Corporation all his powers under that act.

By an act of July 11, 1918 (c. 143, 40 Stat. 888), the land condemnations act of July 2, 1917 (c. 35, 40 Stat. 241), was extended to include whatever was necessary to supply timber products to the Fleet Corporation, which was authorized to condemn "in the name of the United States" any property needed for drydocks, vessels, housing for employees, etc.

Numerous other acts, subsequent to October, 1918, showing congressional recognition of the Emergency Fleet Corporation as an agency of the United States, are set out in the brief for the Government in the *Sloan case*, No. 308, October term, 1921.

All of these operations were financed by appropriations from the Treasury of the United States. By a series of war-time acts Congress appropriated the enormous sum of $3,313,553,000 for direct use by the Fleet Corporation.[1] This was in addition to the $50,000,000 capital stock paid in by the United

[1]

Act June 15, 1917 (40 Stat. 183–184)	$105,000,000
Act Oct. 6, 1917 (40 Stat. 345)	635,000,000
Act July 1, 1918 (40 Stat. 650–651)	1,806,701,000
Act July 11, 1919 (41 Stat. 42)	500,000
Act July 19, 1919 (41 Stat. 180)	356,000,000
Act June 26, 1921 (Public No. 18, 67th Cong.)	61,852,000
Act Aug. 24, 1921 (Public No. 69, 67th Cong.)	48,500,000
Total	3,313,553,000

For all appropriations and the disposition or application thereof up to July 1, 1921, see Hearing before House Committee on Appropriations "Independent offices bill, 1923," 67th Cong., 2d sess., p. 825.

States in instalments between July and November, 1918, and expended in administration expenses.

To recapitulate: The Emergency Fleet Corporation was formed by the Shipping Board under an authorization contained in the shipping act of 1916—a preparatory measure for war; it was organized after war was declared for purposes connected with the prosecution of the war; by lawful delegation it became the receptacle of all the war-time emergency powers conferred on the President in respect of shipping; its powers were not merely of a public nature, but were sovereign in character, and included the power to requisition ships, plants, materials, and facilities; its operations were wholly financed by appropriations from the Treasury of the United States; and it had no business save the Government's business.

II.

The United States Employees' Compensation Commission had lawfully assumed jurisdiction over the employees of the Emergency Fleet Corporation and its jurisdiction was exclusive.

By an act of Congress approved September 7, 1916 (ch. 458, 39 Stat. 742), entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," it was provided (sec. 1)—

> That the United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a per-

> sonal injury sustained while in the performance of his duty. * * *

By section 28 of said act a commission was created to be known as the United States Employees' Compensation Commission, and by section 32 it was provided—

> That the commission is authorized to make necessary rules and regulations for the enforcement of this act, and shall decide all questions arising under this act.

Construing the act the Comptroller of the Treasury held that under section 32 the commission was empowered to decide what claimants were entitled to the benefits thereof (25 Comp. Dec. 197); and in a later opinion ratified the action of the commission in awarding compensation to employees under cost-plus-profit contracts, saying:

> The United States Employees' Compensation Commission created by that act has considered some cases of employees under cost-plus-profit contracts of the Government and has held that persons employed under such contracts are employees of the Government, entitled to the benefits of the act. In all such cases the benefits thus provided are exclusive, and no other compensation in any form whatever may be paid, either directly or indirectly, by the Government. Neither is any premium for compensation insurance for such employees a proper charge against the Government (25 Comp. Dec. 222).

In an opinion to the President dated March 21, 1918 (31 Op. A. G. 252), the Attorney General held that under section 32 the commission has power, when the question is properly presented in a specific case, to decide whether employees of the Emergency Fleet Corporation, or other persons, are entitled to the benefits of the act.

Following these interpretations of the act the commission, on May 8, 1918, adopted the following resolution, as shown by its minute book:

> Employees of the United States Shipping Board Emergency Fleet Corporation are civil employees of the United States and are therefore covered by the terms of the compensation act of September 7, 1916, but each claim must be settled by the commission when it is submitted.

This action of the commission has been recognized and confirmed by Congress in the urgent deficiencies act of December 24, 1919 (ch. 17, 41 Stat. 377). That act, after making an appropriation of $1,100,000 to cover payment of compensation awarded by the commission, contains the following proviso:

> *Provided*, That the compensation heretofore or hereafter paid by the United States Shipping Board Emergency Fleet Corporation to or on account of employees for disability or death resulting from personal injuries sustained while in the performance of their duties shall be in full satisfaction of the claims of such employees or their legal representatives against the United States.

The proviso recognizes that injured employees of the Emergency Fleet Corporation are compensable under the Federal act and provides against double compensation in cases where the employee is compensated by the Fleet Corporation itself. That such was the purpose of the proviso appears from the following statement by Chairman Good, of the Appropriations Committee:

> Mr. MANN of Illinois. Will the gentleman yield? What is the purpose of that?
>
> Mr. GOOD. The purpose of that provision is to prevent in the future any person who was paid by the Emergency Fleet Corporation or the Shipping Board for injuries received subsequently making a claim against the United States under the provisions of the employees' compensation act and claiming that he was entitled to the provisions of that act. Unless the matter is absolutely understood and provided for in some such way, we stand a fair show of paying for those injuries twice, once by the Shipping Board Emergency Fleet Corporation and another time by the compensation commission.
>
> Mr. MANN of Illinois. That is, the Shipping Board could make a voluntary contribution in the way of compensation, and then, after receiving that, the person injured might apply for the legal compensation authorized by law.
>
> Mr. GOOD. The gentleman has stated it correctly, and this amendment provides that if they receive compensation from the Shipping Board or the Emergency Fleet Corporation for their injuries it shall be in full of all com-

pensation for such injuries under the provisions of the compensation act.

Mr. MANN of Illinois. Well, does the gentleman think that that would give a person the right to choose between the two, or is he required now to take the compensation from the Shipping Board?

Mr. GOOD. I particularly inquired as to whether there was any dissatisfaction among these employees in the various plants, and Judge Payne advised me that there is absolutely no dissatisfaction, that they are all satisfied with the compensation which he has been able to pay and which his predecessor paid, and while the compensation paid in most instances will be a little less than the compensation provided for under the compensation act, yet they are entirely satisfied with it and accept it in that spirit. (Cong. Rec., vol. 59, pt. 1, p. 854.)

It thus appears that the Federal Government, through its Employee's Compensation Commission, had made provision for the compensation of the Fleet Corporation's employees. Even if it be conceded, for the purpose of the argument, that in the absence of such provision the State law would apply, yet as soon as the Federal Government assumed jurisdiction the subject was removed from the authority of the State.[1] But no such concession can be indulged, as will hereafter appear.

[1] *Houston* v. *Moore*, 5 Wheat. 1, 21; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 617; *Pennsylvania* v. *Wheeling Bridge Co.*, 13 How. 518; *Sinnot* v. *Davenport*, 22 How. 227; *Nashville, C. & St. L. Ry. Co.* v. *Alabama*, 128 U. S. 96.

III.

Even in the absence of such assumption of jurisdiction by the Federal Commission, the Emergency Fleet Corporation, as a lawfully created corporate agency of the United States, was not subject to the State law.

It is no longer an open question that Congress has the authority to create a corporation under the laws of the United States as a means through which to execute the powers of Government.[2]

Such corporate agency when so created is entitled to the same immunity from State regulation and taxation as any other Government agency or instrumentality. This is the fundamental law of the land laid down in the early cases of *McCulloch* v. *Maryland* (4 Wheat. 316) and *Osborn* v. *United States Bank* (9 Wheat. 738).

While those historic cases are too familiar to require exposition, brief quotations from the opinions may be pardoned because peculiarly appropriate to the present case. In *McCulloch* v. *Maryland*, in holding that a State could not lay a stamp tax on bills, notes, etc., issued by the branch of the Bank of the United States situated in the State, Chief Justice Marshall said (p. 429):

> The sovereignty of a State extends to everything which exists by its own authority, or is introduced by its permission; but does it

[2] *McCulloch* v. *Maryland*, 4 Wheat. 316, 407, 411, 414, 415, 419, 421–2; *Osborn* v. *U. S. Bank*, 9 Wheat. 738, 860–863; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529, 530; *California* v. *Pacific R. Co.*, 127 U. S. 1, 39; *1st Nat. Bk.* v. *Union Trust Co.*, 244 U. S. 416, 425; *Smith* v. *Kansas City Title Co.*, 255 U. S. 180, 208–211.

> extend to those means which are employed by Congress to carry into execution powers conferred on that body by the people of the United States? We think it demonstrable, that it does not. Those powers are not given by the people of a single State. They are given by the people of the United States, to a government whose laws, made in pursuance of the Constitution, are declared to be supreme. Consequently, the people of a single State can not confer a sovereignty which will extend over them. * * * We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power. The attempt to use it on the means employed by the Government of the Union, in pursuance of the Constitution, is itself an abuse, because it is the usurpation of a power which the people of a single State can not give.
>
> We find, then, on just theory, a total failure of this original right to tax the means employed by the Government of the Union, for the execution of its powers. The right never existed, and the question whether it has been surrendered, can not arise.

And on page 432 he said:

> If the States may tax one instrument, employed by the Government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the cus-

> tomhouse; they may tax judicial process; they may tax all the means employed by the Government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their Government dependent on the States.

And on page 436 he said:

> *The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general Government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.*

In *Osborn* v. *United States Bank* (9 Wheat. 738) it was held that the State could not tax the United States Bank for doing business in the State contrary to law. On page 867 the court said:

> The appellants rely greatly on the distinction between the bank and the public institutions, such as the mint or the post office. The agents in those offices are, it is said, officers of Government, and are excluded from a seat in Congress. Not so the directors of the bank. The connection of the Government with the bank, is likened to that with contractors.
>
> It will not be contended, that the directors, or other officers of the bank, are officers of Government. But it is contended, that, were

their resemblance to contractors more perfect than it is, the right of the State to control its operations, if those operations be necessary to its character, as a machine employed by the Government, can not be maintained. Can a contractor for supplying a military post with provisions, be restrained from making purchases within any State, or from transporting provisions to the place at which the troops are stationed? Or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative. It is true, that the property of the contractor may be taxed, as the property of other citizens; and so may the local property of the bank. But we do not admit, that the act of purchasing, or of conveying the articles purchased, can be under State control.

Also apposite are:

Farmers' & Mechanics' National Bank v. *Deering*, 91 U. S. 29.

Owensboro National Bank v. *Owensboro*, 173 U. S. 664.

First National Bank v. *Union Trust Co.*, 244 U. S. 416.

Smith v. *Kansas City Title Co.*, 255 U. S. 180.

IV.

In an unbroken line of decisions this court has held that the agencies and instrumentalities of the Federal Government are immune from State taxation and regulation.

At the outset a distinction is to be noted between the imposition by the States of reasonable restrictions and regulations on interstate commerce as an

incident of the discharge of their reserved powers and the complete lack of power in the States in any manner to interfere with, regulate, or tax the instrumentalities, agencies, or operations of the Federal Government.

As stated in a recent decision of this court (*Gillespie v. Oklahoma*, *infra*, p. 33), "the criterion of interference by the States with interstate commerce is one of degree," whereas, in the case of Federal instrumentalities, "the rule * * * is absolute in form and at least stricter in substance." The truth of the matter is that there can be no such thing as a "reasonable regulation" by a State of a Federal agency or operation. To concede such power in the States would be to deny the complete sovereignty of the Federal Government in the discharge of its constitutional functions.

Of course, an individual employee of the United States, in the conduct of his personal affairs, may be amenable to State laws and State taxation to the extent that those manifestations of authority do not affect or impede the discharge of his duties as such employee. For a simple illustration, such employee would be subject to the State laws punishing murder for an unlawful homicide not committed in the course of his employment. But it would be otherwise if the killing were committed by him in the discharge of his duty as an officer of the United States. *In re Neagle*, 135 U. S. 1.

No question arises in the present case as to the capacity in which the Emergency Fleet Corporation was operating in Pennsylvania at the time the injury to Sullivan occurred. It was there solely as the delegate of the President in the exercise of war-time powers conferred on him. The direct and immediate effect of the Pennsylvania statute, in its application to the Fleet Corporation, is to write into every contract of employment a provision not stipulated by the parties; to compel the Fleet Corporation to litigate in tribunals not of its own choosing; to visit on the Fleet Corporation a liability to which it would not otherwise be subject; and to impress on the Fleet Corporation's property, acquired with public moneys and held in behalf of the United States, liens in favor of persons who, except for such law, would have no legally enforceable claim against the Fleet Corporation or the Government. The statute, therefore, more clearly constitutes an unlawful interference with a Government agency than the statutes which have been declared invalid in the previous decisions of this court.

In the following summary several cases relating to State taxation in addition to those cited under the preceding heading are included for the reason that the taxing power is admittedly the highest power of sovereignty, and since, as these cases demonstrate, the States are impotent in any degree to impose this burden upon the agencies and instrumentalities of the Federal Government, *a fortiori*, such

instrumentalities and agencies are immune from all State laws and regulations enacted in pursuance of their ordinary police powers.

1. CASES INVOLVING STATE TAXATION OF FEDERAL AGENCIES AND INSTRUMENTALITIES.

In *Weston* v. *City of Charleston* (2 Pet. 449), it was held that a city had no right to tax as property of its citizens United States bonds owned by them.

In *Banks* v. *The Mayor* (7 Wall. 16) and in *Bank* v. *Supervisors* (*id.* 26) the same ruling was made as to certificates of indebtedness of United States and its legal tender notes, while in the recent case of *Farmers' Bank* v. *Minnesota* (232 U. S. 516) it was extended to bonds issued by Territorial municipalities. There are further decisions of the same character which it does not seem necessary to refer to.

In *Dobbins* v. *The Commissioners* (16 Pet. 435) it was held that a State could not levy a tax on the official income of a Federal officer, and, conversely, in *Collector* v. *Day* (11 Wall. 113) it was held that the United States could not tax the official income of a State officer, and in *United States* v. *R. R. Co.* (17 Wall. 322) that the United States could not tax the bonds taken by the city of Baltimore to represent its advances to the B. & O. R. R. Co., and in *Ambrosini* v. *United States* (187 U. S. 1) it was held that the United States could not levy a stamp tax on the bonds required from liquor dealers under the liquor laws of the State of Illinois. (See also *Fifield* v. *Close* (15 Mich. 505), holding that the United States could

not levy a stamp tax on the judicial process of a State.)

In *Fort Leavenworth R. R. Co.* v. *Lowe* (114 U. S. 525, 539), the court said:

> Where, therefore, lands are acquired in any other way by the United States within the limits of a State than by purchase with her consent, they will hold the lands subject to this qualification: that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. *Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers.* But, when not used as such instrumentalities, the legislative power of the State over the places acquired will be as full and complete as over any other places within her limits.

In *Van Brocklin* v. *State of Tennessee* (117 U. S. 151), it was held that the State could not tax lands bought in by the United States at tax sale, so long as the title remained in the United States, and this was affirmed in *Wisconsin R. R. Co.* v. *Price County* (133 U. S. 496, 504), where the court said:

> It is familiar law that a State has no power to tax the property of the United States within its limits. This exemption of their property from State taxation—and by State taxation we mean any taxation by authority of the State, whether it be strictly for State purposes or for mere local and special objects—*is founded upon that principle which inheres in every independent government, that it must be free from any such interference of another government as may tend to destroy its powers or impair their efficiency.*

Three recent decisions of this court on the subject are worthy of particular notice. In *Williams* v. *Talladega* (226 U. S. 405), the municipality of the State of Alabama laid a license tax of $100 on each telegraph corporation engaged in the business of sending messages to and from the city, to and from points in the State, and section 2 of the ordinance expressly stated that the license was exacted in exercise of the police power of the city. The corporation in question had accepted the provisions of the act of July 24, 1866, by which it was provided (R. S. 5266), that telegrams between the several departments of the Government and their officers and agents should have priority over all other business *at such rates as the Postmaster General should annually fix.* The Supreme Court held the whole ordinance void, saying (p. 419):

> We have, then, an ordinance which taxes, without exemption, the privilege of carrying on a business a part of which is that of a

> governmental agency constituted under a law of the United States and engaged in an essential part of the public business—communication between the officers and departments of the Federal Government. The ordinance, making no exception of this class of business, necessarily includes its transaction within the privilege tax levied. This part of the license exacted necessarily affects the whole and makes the tax unconstitutional and void. * * *

In *The Choctaw, etc., R. R. Co.* v. *Harrison* (235 U. S. 292) a suit was brought to enjoin a State from levying a tax based upon the gross receipts from mining coal. The appellants had a contract or lease from the United States to mine coal for the benefit of certain Indians. It was held that the tax could not be enforced against the coal company. The court said (p. 298):

> From the foregoing it seems manifest that the agreement with the Indians imposed upon the United States a definite duty in respect to opening and operating the coal mines upon their lands, and appellant is the instrumentality through which this obligation is being carried into effect. Such an agency can not be subjected to an occupation or privilege tax by a State.

Finally in *Gillespie* v. *Oklahoma* (257 U. S. 501), the State of Oklahoma sought to hold the plaintiff in error liable for taxes upon net income derived by him as lessee from leases of restricted Indian lands, such leases being of the character dealt with in

Choctaw, Oklahoma & Gulf R. R. Co. v. *Harrison* (*supra*). It was admitted that the lessee was an instrumentality used by the United States in carrying out duties to the Indians that it had assumed, and the only question was whether he was liable to that kind of a tax. In holding the tax void, the court said (p. 505):

> The criterion of interference by the States with interstate commerce is one of degree. It is well understood that a certain amount of reaction upon and interference with such commerce can not be avoided if the States are to exist and make laws. (*New York, New Haven & Hartford R. R. Co.* v. *New York*, 165 U. S. 628; *Diamond Glue Co.* v. *United States Glue Co.*, 187 U. S. 611, 616.) The rule as to instrumentalities of the United States on the other hand is absolute in form and at least stricter in substance. (*Williams* v. *Talladega*, 226 U. S. 404, 416, 417, 419; *Johnson* v. *Maryland*, 254 U. S. 51, 55.) "A tax upon the leases is a tax upon the power to make them, and could be used to destroy the power to make them." (240 U. S. 530.) The step from this to the invalidity of the tax upon income from the leases is not long.

2. CASES INVOLVING STATE REGULATION OF FEDERAL INSTRUMENTALITIES OR AGENCIES.

In *Ohio* v. *Thomas* (173 U. S. 276), it was held that the manager of the Soldiers' Home at Dayton, Ohio, was not subject to the oleomargarine laws of the State, although the home was on property jurisdiction over which was in the State. In the opinion of Judge

Taft (82 Fed. 304, 309, 310), which was adopted by the Circuit Court of Appeals and is referred to with approval by the Supreme Court (p. 284), it is said:

> * * * It is entirely immaterial in what place, within the jurisdiction of the Government of the United States, the duty is discharged. *State lines can not effect or modify the complete control which the Federal Government and its agents and officers duly authorized have over the manner of discharging it. The jurisdiction of the State government in such a case is excluded not because of the place where the act is done, but because that which is being done is the business of the United States, and such business is as completely beyond the influence and control of the State government as if it were not done within the territory of the State.*

In *Johnson* v. *Maryland* (254 U. S. 51) this court held that a law of a State penalizing those who operate motor trucks on highways without having obtained licenses based on examination of competency and payment of a fee can not constitutionally apply to an employee of the Post Office Department while engaged in driving a Government motor truck over a post road in the performance of his official duty.

In *United States* v. *Snyder* (149 U. S. 210) it was held that a State could not compel the registration of a lien reserved to the United States by its laws for a failure to pay Federal taxes, although a bona fide purchaser suffered.

In *United States* v. *Ansonia Brass, etc., Co.* (218 U. S. 452) the United States entered into a contract with a corporation organized under the laws of Virginia for the construction of certain vessels. The laws of Virginia provided for a lien for supplies upon property of the contractor. The Supreme Court held that the title to one of the vessels passed to the United States as it was constructed, and assumed that the Supreme Court of Virginia had held that the supply lien law did not apply under such circumstances. Nevertheless, the court said (p. 471):

> * * * In any event, it could not be tolerated that property of the United States could be seized or encumbered under State lien laws of the character in question. We are not now dealing with the right of a State to provide for such liens while property to the chattel in process of construction remains in the builder, who may be constructing the same with a view to transferring title therein to the United States upon its acceptance under a contract with the Government. We are now treating of property which the United States owns. Such property, for the most obvious reasons of public policy, can not be seized by authority of another sovereignty against the consent of the Government. The Benyuard, as fast as constructed, became one of the instrumentalities of the Government, intended for public use, and could not be seized under State laws to answer the claim of a private person, however meritorious.

Even an otherwise commendable purpose will not justify the interference of the State with a Federal instrumentality. Thus in *Flaherty* v. *Harrison* (215 U. S. 515) this court held that a person who had obtained a Federal liquor dealer's tax receipt could not be required to register it pursuant to State law to the end that the State authorities might have the benefit of the information stated therein in the enforcement of the local statute against "unlawful traffic in intoxicating liquors."

In *Pembina Mining Co.* v. *Pennsylvania* (125 U. S. 181, 186) this court recognized that a corporation employed by the United States to construct a ship or man-of-war would have the right to purchase timber and iron in any State of the Union without the permission of the State and even against the prohibition of the State.

In re Waite (81 Fed. 359) involved the performance of official duty by an employee of the Pension Bureau. The employee exercised his judgment as to the manner in which that duty should be performed. In what he did he was alleged to have violated a law of the State. He was indicted, tried, and convicted. On *habeas corpus* the Federal court released him, holding, in effect, that the State could not supervise or delimit the performance of his official duty.

V.

Two of the lower federal courts have held that the property of the Emergency Fleet Corporation is not subject to taxation by the States.

In *United States* v. *Coghlan* (261 Fed. 425) the United States District Court for Maryland sustained a bill in equity by the United States to enjoin the collection of taxes on the property of the Emergency Fleet Corporation. Judge Rose said (p. 426):

> It was shown that all of the stock of the Fleet Corporation was owned by the Government, and that all it did was done for Government account, and that all the profits which it made would inure to the Government, which would have to stand all the losses. Under such state of facts, it is unnecessary to inquire whether for all purposes the Fleet Corporation is the Government. It suffices that it is a governmental agency, exclusively employed in governmental work, and as such its property is not liable to State taxation.

And in the very recent case (September, 1922) of *King County, Washington*, v. *Emergency Fleet Corporation*, the Circuit Court of Appeals for the Ninth Circuit held that the property of the Fleet Corporation was immune from State taxation, notwithstanding the decisions of this court in the *Strang Case* (254 U. S. 491) and the *Sloan* and *Astoria cases* (Nos. 308 and 376, last term). The very pertinent and illuminating opinion of the Court of Ap- is printed in full as an appendix *infra*.

VI.

This case is not controlled or affected by the decisions in the Strang case and the Sloan and Astoria cases.[1]

In the *Strang case* (254 U. S. 491) it was held that a person employed as an inspector by the Emergency Fleet Corporation is not an *agent of the United States* within the meaning of section 41 of the Criminal Code making it an offense for any such agent to place an order in behalf of the United States with a corporation in which he was pecuniarily interested. The proposition that the Fleet Corporation itself is an agency of the United States was not involved; the sole ground of decision being that, since the Fleet Corporation, whatever its status, was a separate entity, its agents were not agents of the United States within the meaning of this highly penal statute.

In the *Sloan* and *Astoria cases* (Nos. 308 and 376, last term, decided May 1, 1922) the court simply held that the Emergency Fleet Corporation, although clothed with governmental powers incident to the prosecution of the war, was answerable in court for its alleged unlawful acts. Both cases came to this court on motions to dismiss for want of jurisdiction, and the decision of this court, rightly understood, means no more than that the Fleet Corporation, like any other officer or agent of the Government, is amenable to judicial process and must justify its

[1] A third case, decided with the *Sloan* and *Astoria cases*, was *Emergency Fleet Corporation* v. *Wood, Trustee in Bankruptcy*, No. 526. That case, following the *Strang case*, merely holds that the Fleet Corporation, as a separate entity, is not entitled to the special privileges conferred on the United States in the matter of the distribution of bankrupt estates.

alleged unlawful acts at the bar of justice. This sufficiently appears from the following language from the opinion:

> * * * The general rule is that any person within the jurisdiction always is amenable to the law. If he is sued for conduct harmful to the plaintiff his only shield is a constitutional rule of law that exonerates him. Supposing the powers of the Fleet Corporation to have been given to a single man, we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of Government he might be and for the greatest ends, but the agent, because he is agent, does not cease to be answerable for his acts.

In none of those cases, therefore, was it held or even intimated that the Emergency Fleet Corporation was not an agency or instrumentality of the Government; on the contrary, that proposition was always conceded, as indeed it was expressly held in *The Lake Monroe* (*supra*, pp. 13–16). That being so, those cases have no bearing on the instant case, which involves an attempted interference with such governmental agency by a State. As said by the Circuit Court of Appeals for the Ninth Circuit in *King County* v. *Fleet Corporation* (appendix, *infra*):

> It is one thing for the Government to constitute an agency for the convenient and ex-

peditious transaction of its business and to commit to such agency the control of certain public property and to authorize it to contract and to sue and to be sued in relation thereto, but quite another thing to permit such property to be encumbered with burdens in the imposition of which neither it nor its agent has any part. For reasons of expediency it might be willing to be bound by the consequence of the voluntary acts or omissions of such an agent—of its own selection—and might be willing in effect to waive its right to immunity from suit by consenting that such agent be sued as its representative in respect to property and matters within the scope of its agency, and even that the property held by such agent be subject to execution process; but all that would fall far short of permitting, or disclosing a willingness to permit, such property to be subjected to taxation levied by representatives of an independent government.

VII.

The Emergency Fleet Corporation did not waive its immunity from State regulation, nor could it have done so.

The chairman of the Pennsylvania Workmen's Compensation Board, in an opinion filed after the hearing before the full board (Rec. 16), held, in effect, that the Emergency Fleet Corporation had voluntarily submitted to the jurisdiction of the board because it had, through its agent, the American International Shipbuilding Corporation, filed a

petition with the board asking permission to carry its own insurance, which was granted.

Even if this were true, which we do not concede, such action could not have constituted a waiver by the Fleet Corporation of its governmental immunity except as tc procedure. The question would still remain, whether a state could *burden* an instrumentality of the United States. This question the Fleet Corporation could not waive. *Stanley* v. *Schwalby*, 162 U. S. 255; *Carr* v. *United States*, 98 U. S. 433; *Hill* v. *United States*, 9 How. 386; *United States* v. *New York & O. S. Co.*, 216 Fed. 61, 63–64.

However, an examination of the application, as set forth in the opinion, shows that the board completely misinterpreted the effect of what was done, and that the application was not made by the Emergency Fleet Corporation and did not pertain to the Fleet Corporation's employees, but was in fact made by the American International Shipbuilding Corporation, one of the Fleet Corporation's many contractors, covering its (the American International's) employees. (Rec. 16–17.)

In order that this may be clear, it should be explained that the actual shipbuilding operations were for the most part carried on by private corporations acting as contractors of the Fleet Corporation under cost-plus profit contracts. In particular, the American International Shipbuilding Corporation acted as such contractor of the Fleet Corporation in the construction of the Hog Island shipyard. In the present instance the Fleet Corporation approved the applica-

tion of its contractor to the Pennsylvania Board, but the application was by the contractor in its own behalf; it was not in behalf of the Fleet Corporation. (Rec. 22.)

As the record clearly shows, the claimant, Sullivan, was employed by the Fleet Corporation and not by the American International Shipbuilding Corporation.

CONCLUSION.

It is respectfully submitted that the judgment of the Superior Court of Pennsylvania should be reversed and that the case should be remanded with instructions to dismiss the claim against the Emergency Fleet Corporation in accordance with the proper practice.

JAMES M. BECK,
Solicitor General.

ABRAM F. MYERS,
Special Assistant to the Attorney General.

DECEMBER 14, 1922.

Appendix.

United States Circuit Court of Appeals for the Ninth Circuit. King County, Washington, a Municipal Corporation, Wm. A. Gaines, as treasurer of King County, Washington, and Matt Starwich, as sheriff of King County, Washington, appellants, *v.* The United States Shipping Board Emergency Fleet Corporation, a corporation, appellee. No. 3851. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Before Morrow and Hunt, circuit judges, and Dietrich, district judge.

Dietrich, *District Judge:*

This suit was brought to enjoin the collection of taxes levied in the years 1919 and 1921, by the officers of King County, Washington, upon shipyard property in that county purchased by the plaintiff, United States Shipping Board Emergency Fleet Corporation, on November 21, 1918.

Holding in effect that the property belonged to the United States and was therefore exempt from taxation, the court below overruled the defendants' motion to dismiss, and upon their declination to plead further, entered a decree adjudging the taxes void and enjoining proceedings to collect. The appeal is by the county and its officers from this decree.

The status of the Fleet Corporation has had frequent consideration, and it is to be conceded that, in view of the decisions of the Supreme Court in *In re*

Lake Monroe (250 U. S. 246), *United States* v. *Strang* (254 U. S. 491), and, more especially, *Sloan Shipyards Corporation et al.* v. *Fleet Corporation* (—— U. S. ——), the question here involved is reduced to narrow compass. As construed by both the majority and minority in this last case, the provisions of section 4 of the act of June 5, 1920 (41 Stat. 988, 990), apparently operated to transfer the property in question from the Fleet Corporation to the Shipping Board, and it would seem to follow as of course that at least the 1921 tax claim is invalid, unless we go to the extent of holding that property of the United States in charge of one of its public boards is subject to State taxation.

But putting aside that consideration, let us assume that the status of the property was the same in 1921 as in 1919. In that view the Fleet Corporation held the legal title, but the entire beneficial interest was in the Government. The Government caused the corporation to be formed, hold all of its stock and furnished all of its capital. It also supplied the funds with which the property in question was purchased.

That it was in the power of Congress to exempt property so acquired and held from taxation admits of no doubt. As has been said in cases where public property and public interests were not so clearly involved: "It follows then necessarily from these conclusions that the respective States would be wholly without power to levy any tax, direct or indirect, upon national banks, their property, assets or franchises, were it not for the permissive legislation of Congress." *Owensboro Nat'l Bank* v. *Owensboro* (173 U. S. 664, 668); *Smith* v. *Kansas City T. Co.* (255 U. S. 180, 212).

Is it then a question of legislative intent? Did Congress permit or intend to permit shipyard property so held to be locally taxed, under State authority? There is no expressed consent, and if we look for implied permission where are we to find it? If, taking a view most favorable to the defendants, but hardly warranted by the record, we assume the property was acquired with funds coming from the "sale" of the capital stock of the Fleet Corporation to the Government, we would have a case where the Government, for its own convenience and for the more expeditious dispatch of public business, instead of acting directly through a recognized governmental department, brings into existence a new agency in the form of a private corporation, which it controls and in which it holds all of the stock, and to which it contributes its entire capital. With the unparalleled burdens of war, and with the growing problems of national taxation, is it probable or even credible that Congress intended to waive the Government's right of exemption, and in effect to tax the entire country to discharge burdens of local State taxation?

Touching this question of legislative intent, the status of the Fleet Corporation, as defined in the decisions referred to, is of little, if any, significance. It is one thing for the Government to constitute an agency for the convenient and expeditious transaction of its business and to commit to such agency the control of certain public property and to authorize it to contract and to sue and to be sued in relation thereto, but quite another thing to permit such property to be encumbered with burdens in the imposition of which neither it nor its agent has any

part. For reasons of expediency it might be willing to be bound by the consequence of the voluntary acts or omissions of such an agent, of its own selection, and might be willing in effect to waive its right to immunity from suit by consenting that such agent be sued as its representative in respect to property and matters within the scope of its agency, and even that the property held by such agent be subject to execution process; but all that would fall far short of permitting, or disclosing a willingness to permit, such property to be subjected to taxation levied by representatives of an independent government.

As already intimated, it is not thought the question is foreclosed by the Sloan Shipyard decision. That case had to do with the intent of Congress upon another subject—the status of the corporation; but here we are concerned with the status of property and the intention of Congress in respect thereto. Exemption from taxation are distinct prerogatives, and the waiver of one does not necessarily imply waiver of the other.

It is to be borne in mind that it is not a case merely of a tax upon the property belonging to a designated agency of the Government; nor is it a case where Congress has made a grant of lands or an appropriation to a private individual or corporation in aid to the creation of a needed facility, in consideration of the right reserved to the Government to require the use thereof for Government purposes in certain stated contingencies. In such cases the property, whether originally owned by or granted by the Government to private parties, belongs to them and may be and generally is used by them for private gain. Subject to the qualification sug-

gested, they have not only the legal but the beneficial title as well, and the contingent right or interest of the Government does not substantially differentiate the status of the property from that of other property of the same general class. But here, admittedly, the property is not only held by a governmental agency, but was acquired with public funds and was to be used exclusively for public purposes. To hold that it lost its public character because the Government chose to have the legal title taken in the name of a corporation which it brought into existence and completely controls for its own convenience, and the entire capital stock of which it owns, would be to sacrifice substance to form.

There is no suggestion that Congress ever contemplated the direct or indirect grant to private parties of any substantial right in the property or the alienation by the Government of any beneficial interest. Its understanding in that respect is clearly exemplified in section 4 of the Act of June 5, 1920, supra, where its unqualified right to dispose of property, without any action on the part of the corporation, and to transfer it to the Shipping Board, is assumed.

But it appears that this property was purchased not with money paid in for the capital stock of the Fleet Corporation, but with funds especially appropriated by Congress for the purpose, some time after the Fleet Corporation was fully organized.

Power to acquire shipyards is not to be found in the act providing for the creation of the Fleet Corporation. The acquisition of such property was for the first time authorized by the act of November 4, 1918 (40 Stat. 1022), and an appropriation of $34,662,500.00 was made for that purpose. Clearly,

in the matter of expending this public money, under the direction of Congress and the President, in the purchase of property for governmental purposes, and in taking and holding the legal title thereto, the corporation was acting as a naked trustee, and the entire beneficial interest was in the Government. And what does it matter that the Fleet Corporation may, in a measure, have had the status of an ordinary corporation? Let us assume that it was purely a private concern and originally had none of the attributes of a public agency, and then let us suppose that by Congress and the President, with its consent, public funds were placed in its custody to be expended by it in the acquisition of shipyards for Government uses, and it was authorized to take and hold the legal title thereto, would it be contended that such property continued to be subject to State taxation merely because the legal title was held by a private corporation having no real interest? The taxable character of property is to be referred to the status of the real rather than of the nominal owner. Private property is not exempt from taxation because the Government holds the legal title thereto, and by parity of reasoning neither is public property taxable because the naked legal title is in a private person. *Carroll* v. *Stafford* (3 How. 444); *Witherspoon* v. *Duncan* (4 Wall. 210).

In principle the case is not unlike those cases where for convenience a State has created corporate bodies to hold property for and manage public educational and charitable institutions, and other governmental projects, and attempts have been made to tax property so held. *Auditor General* v. *Regents* (83 Mich. 467; 47 N. W. 440); *Tulare* v. *Board* (38 La. Ann. 296); *Board of Trustees* v. *Champaign Co.* (76 I. 184);

Reclaim. Dist. v. *Sacramento Co.* (134 Cal. 477; 66 Pac. 668); *Board of Regents* v. *Hamilton* (28 Kan. 376); *Herrick* v. *Sargent* (132 Am. St. Rep. (Ia.) 330); *New Haven* v. *Sheffield* (Conn.) (22 Atl. 156); *State* v. *Westminster College* (Mo.) (74 S. W. 990); *Commonwealth* v. *Pollitt* (Ky.) (76 S. W. 412); *Ellsworth College* v. *Emmett Co.* (Ia.) (135 N. W. 594); *Williston Seminary* v. *Co. Com.* (Mass.) (18 N. E. 210).

Upon the whole, we are unable to find any substantial evidence of an intent to grant permission to tax, and accordingly the judgment will be affirmed. Costs to respondent.

Affirmed.

(Endorsed): Opinion. Filed September 5, 1922, F. C. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1922.

No. 93.

UNITED STATES SHIPPING BOARD, EMERGENCY FLEET CORPORATION,
Petitioner,
vs.
JOHN E. SULLIVAN.

No. 124.

UNITED STATES SHIPPING BOARD, EMERGENCY FLEET CORPORATION,
Plaintiff in Error,
vs.
JOHN E. SULLIVAN.

BRIEF OF DEFENDANT IN ERROR.

SAMUEL SCOVILLE, JR.,
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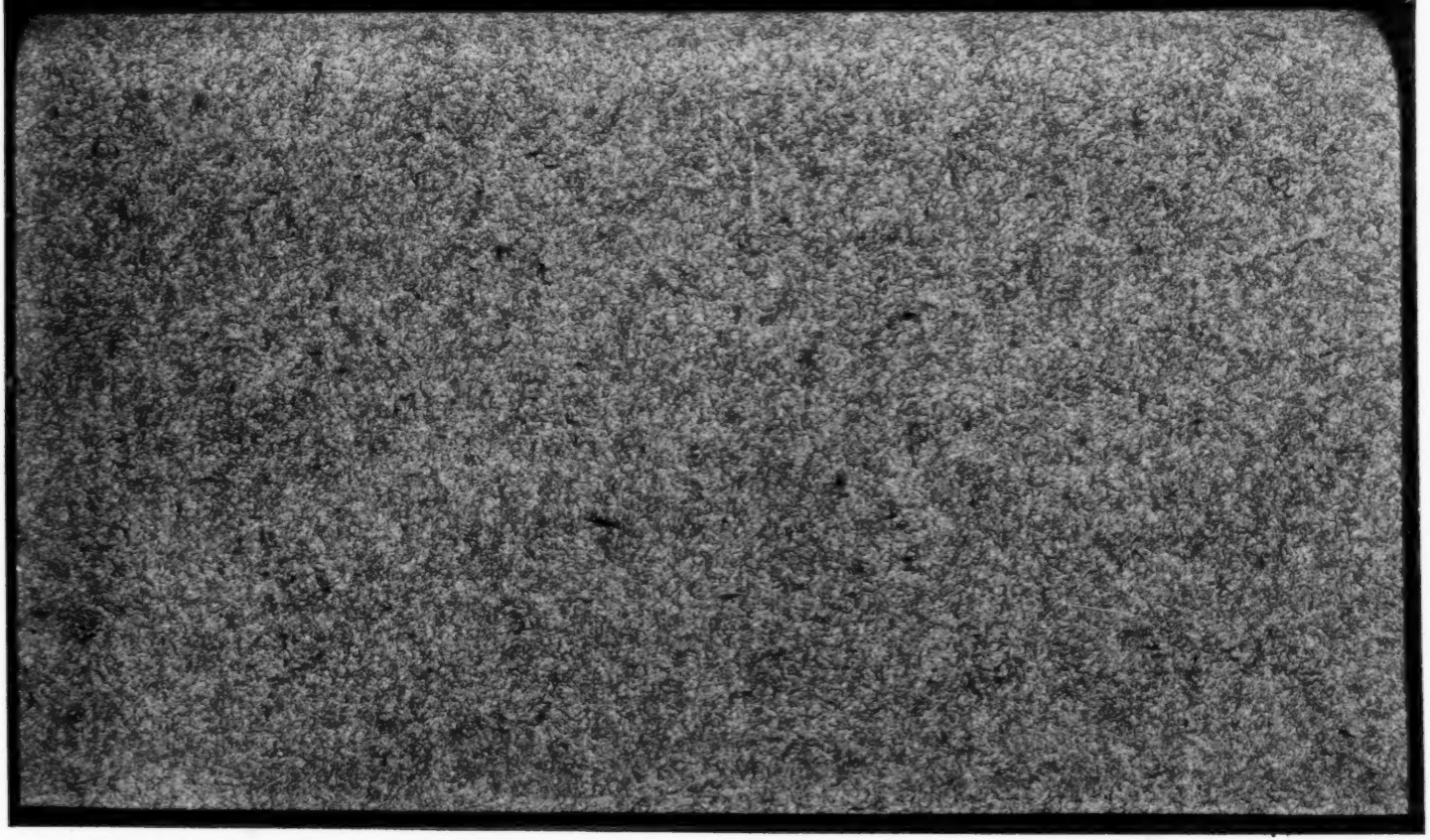

IN THE

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No. 121.

UNITED STATES SHIPPING BOARD, EMERGENCY FLEET CORPORATION,

Plaintiff in Error,

vs.

JOHN E. SULLIVAN.

BRIEF OF DEFENDANT IN ERROR.

There are two proceedings pending herein; one under a petition for certiorari filed June 13, 1921, No. 93, and the other under a writ of error filed July 18, 1921, No. 124. This brief is filed in behalf of John E. Sullivan, defendant in error and appellee in both cases.

As will appear by the petition for a writ of certiorari this is an appeal to the Supreme Court of the United States from the Superior Court of Pennsylvania, the latter not being the court of last resort in the State of Pennsylvania, the Supreme Court of Pennsylvania having refused to allow an appeal or to grant a writ of error.

The United States Shipping Board, Emergency Fleet Corporation, is a corporation incorporated under the laws of the District of Columbia, doing business in the State of Pennsylvania under the provisions of the Compensation Act, which contains a provision that it applies to all accidents occurring within the State of Pennsylvania. As appears by the record, the Fleet Corporation has recognized the authority of the Compensation Board of Pennsylvania, has appeared before it and defended other cases on their merits and joined in a petition of its agents for permission to carry their own insurance. In this case it filed an answer that it was not liable "because the injured man was a civil employee of the United States." No evidence was presented to support this answer. As was said by Judge Dickinson in the case of Commonwealth Finance Corporation *vs.* Landis, Emergency Fleet Corporation garnishee, reported in 261 Federal Reporter at page 440:

> "The defence now interposed is * * * that the Emergency Fleet Corporation is the United

> States of America clothed in the royal purple of sovereignty and because of this cannot be subjected to any process."

It has been held definitely by this Honorable Court in the case of United States *vs.* Strang, reported in 254 U. S. 491, that the Fleet Corporation was controlled and managed by its own officers and appointed its own servants and agents, and notwithstanding all its stock was owned by the United States must be regarded as a separate entity. To the same effect is the case of Haines *vs.* Lone Star Shipbuilding Company, 268 Pa. 92, where in a well-considered opinion the Supreme Court of Pennsylvania wrote in part as follows:

> "To all intents and purposes it operated and existed as any corporation operates and exists, could sue and be sued as any corporation might sue and be sued * * * It is a business corporation to be treated as such, unless Congress expressly provides otherwise, which has not been done in the present instance."

Under these authorities it is submitted that it was the duty of the Emergency Fleet Corporation to prove, if it could, that the claimant in this case was a civil employee of the United States. This it did not do. Its defense, therefore, was not established while the claim of the claimant before the Compensation Board was.

As was said by the Superior Court of Pennsylvania in passing on this appeal:

> "The appellant contended and argued in this court that all it had to do was to say: 'My workmen are civil employees of the United States,'

> and the burden of proving the contrary was cast on the claimant. We do not so understand the law."

In closing it may not be amiss to state that the plaintiff in error has never denied that the claimant was injured or that it owed him compensation. Nevertheless, it never offered to pay him this compensation, but after he was injured discharged him. Unless he recovers this compensation under these proceedings it is too late to take any proceedings before the Federal Compensation Board. Moreover, the traveling expenses necessary to appear before that Board would amount to more than the face of his claim, which is some eighty dollars. It is submitted that the proceedings, both under the writ of error and the certiorari proceedings, should be dismissed for the reason that the plaintiff in error failed to offer any evidence in the court below to sustain its defense.

SAMUEL SCOVILLE, JR.,
Attorney for John E. Sullivan,
Appellee and defendant in error.